Alien Property Custodian Act

HEARING

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS.

SECOND SESSION

ON

H. R. 12651 and H. R. 12884

MARCH 23, APRIL 2, APRIL 27, 1920

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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS.

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ALIEN PROPERTY CUSTODIAN ACT.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Tuesday, March 23, 1920.

The committee met at 10.30 o'clock a. m., Hon. John J. Esch (chairman) presiding.

The CHAIRMAN. The committee has before it this morning two bills—one, H. R. 12651 introduced by Mr. Butler, and one, H. R. 12884, introduced by Col. Winslow—both relating to the Alien Property Custodian act, and particularly relating to married women who have intermarried with aliens. Mr. Butler, do you wish to be heard?

Mr. BUTLER. Mr. Chairman, I introduced the bill H. R. 12651, which was prepared by the attorney general of the State of Pennsylvania. He is here, and I would be very greatly pleased to have the committee hear Mr. Schaffer at this time on that bill.

STATEMENT OF MR. WILLIAM I. SCHAFFER, ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA, HARRISBURG, PA.

Mr. SHAFFER. Mr. Chairman and gentlemen of the committee, I represent at this hearing Mrs. Sallie Crozier Hilprecht, an American-born woman, born of American parents, and of an ancestry that has been American for many generations.

In 1903 she married Prof. Herman V. Hilprecht, who was a German citizen and is still a German subject. Prof. Hilprecht came to Philadelphia in 1888, or prior to that time, but in 1888 he became a professor at the University of Pennsylvania as a curator of the Babylonian section of the University Museum. I have a letter here that I would like to leave with the committee and insert in the record to establish that fact. It says:

THE UNIVERSITY MUSEUM,
Philadelphia, March 17, 1920.

Mr. B. H. LUDLOW,
1200 Lincoln Building.

DEAR SIR: In response to a request which came yesterday from your office, I now send you the following information:

Prof. Herman V. Hilprecht served as curator of the Babylonian section of the University Museum from 1888 until December 31, 1910.

Very truly, yours,

G. B. GORDON, *Director.*

Prof. Hilprecht remained curator of the Babylonian section of the University Museum and professor of Assyriology and kindred subjects at the university until 1910.

In 1903 he married Mrs. Hilprecht. She was at that time a widow and had been a widow for a number of years. She was residing in

Philadelphia, and Prof. Hilprecht also resided in Philadelphia, and had resided there at least since 1888.

At the time of the marriage Mrs. Hilprecht had two sons, one of whom is now deceased and the other is living in the United States. The deceased son subsequently married and has children living in the United States who, of course, are the grandchildren of Mrs. Hilprecht.

As I have stated, Prof. Hilprecht, after his marriage in 1903 continued to reside in Philadelphia and continued to be a professor at the University of Pennsylvania until 1910. He did not take out and never has taken out naturalization papers. He remained a German subject. Whether that was by inadvertence, or for what reason, I do not know; but it is a fact.

In 1914, shortly before the outbreak of the European war, Prof. Hilprecht and his wife went on a pleasure trip to Europe. They frequently went there. Their intention was to return to America. They had gone over to spend the summer. They were in Munich when the war broke out on the 1st of August, 1914.

Prof. Hilprecht was a German subject, of course, in the eye of the German law, and in the eye of our law, by reason of her marriage to Prof. Hilprecht, Mrs. Hilprecht's citizenship was that of her husband. She could not leave Germany, being a German subject, and they remained in Germany during the progress of the war until we declared war upon Germany. When that event happened Mrs. Hilprecht went to Switzerland, where she has since been residing, at Lausanne, in Switzerland. I may say here that she is a cripple and she could not get home because she could not get passports to come home because, according to law, she was a German subject. We have recently arranged a passport for her to come home, and she will come home at such time as she is able to travel.

I will leave with the committee, and if you desire insert in the record as evidencing the fact of the marriage, a certified copy of the application for marriage of Prof. and Mrs. Hilprecht, from records of the State of Pennsylvania.

(The paper referred to is as follows:)

STATE OF PENNSYLVANIA,
Philadelphia County, ss:

Personally appeared Herman V. Hilprecht, who hereby requests the clerk of the orphans' court for the said county to issue a license for the marriage of himself to Sallie C. Robinson, and who, being duly sworn according to law, doth depose and say that he was born in Anhalt, Germany, on the 28th day of July, A. D. 1859; that he resides at 1932 Locust Street, Philadelphia; that his occupation is professor, University of Pennsylvania; that he is not related by blood or marriage to the person whom he desires to marry; that he has once been married before, and the marriage was dissolved by death at Germany about 1st March, 1902; that Sallie C. Robinson (widow), whom he is about to marry, was born in Chester, Pa., on the 26th day of March, A. D. 1856; that she resides at same address; no occupation; that she has once been married before, and marriage was dissolved by death at Switzerland about 11 years ago; that he knows of no reason why the marriage may not be lawfully made.

HERMAN V. HILPRECHT,

Sworn and subscribed before me this 22d day of April, A. D. 1903.

J. AUG. C. GOEBEL.
Third Assistant Clerk of Orphans' Court.

[No. 159661; Duplicate, filed May 22, 1903.]

I, Henry G. Weston, hereby certify that on the 23d day of April, 1903, at Philadelphia, Herman V. Hilprecht and Sallie C. Robinson were by me united in marriage, in accordance with license issued by the clerk of the Orphans' Court of Philadelphia County, Pa., No. 159661.

HENRY G. WESTON,
Minister of the Gospel.

STATE OF PENNSYLVANIA,
Philadelphia County, ss:

I hereby certify the foregoing to be a true and accurate copy of the application for marriage of Herman V. Hilprecht and Sallie C. Robinson, dated the 22d day of April, A. D. 1903; also the return of the officiating clergyman bearing date, April 23, 1903, as the same appears of record in the office of the clerk of the orphans' court of said county.

Witness my hand and seal of said court this 20th day of March, A. D. 1920.

[SEAL.] JAS. B. SHEEHAN,
Clerk of Orphans' Court.

STATE OF PENNSYLVANIA, *Philadelphia County, ss:*

I, Joseph F. Lamorelle, president judge of the Orphans' Court of Philadelphia County, do certify, that the foregoing certificate and attestation, made by James B. Sheehan, Esq., register of wills and ex-officio clerk of said orphans' court, whose name is thereto subscribed and seal of said court affixed, are in due form and made by the proper officer.

In testimony whereof, I have hereunto set my hand, this 20th day of March in the year of our Lord 1920.

LAMORELLE [L. S.]
President Judge.

STATE OF PENNSYLVANIA, *Philadelphia County, ss:*

I, James B. Sheehan, Esq., register of wills and ex-officio clerk of the orphans' court of Philadelphia County, do certify, that Hon. Joseph L. Lamorelle, by whom the foregoing attestation was made, and who has thereunto subscribed his name, was at the time of making thereof, and still is president judge of the Orphans' Court of Philadelphia County, duly commissioned and sworn; to all whose acts, as such, full faith and credit, are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this 20th day of March in the year of our Lord 1920.

[SEAL.] JAS. B. SHEEHAN,
Register of Wills, and ex-officio Clerk of Orphans' Court.

The Alien Property Custodian, believing it was his duty under the alien property act, with which I have no quarrel whatever, took over all of the property belonging to Mrs. Hilprecht. She has a large income which she derives from her father's estate and from investments of her own. I have here a schedule of the property which was in the hands of the Alien Property Custodian on the 30th day of November. We have no report from the Alien Property Custodian since that time. But since that time there has gone into the hands of the Alien Property Custodian further moneys and securities belonging to her.

Mr. DEWALT. You say the 30th of November; of what year?

Mr. SCHAFFER. Of 1919, Mr. Dewalt. I will leave that with the committee.

The Alien Property Custodian has taken over property belonging to Mrs. Hilprecht amounting, in round figures, to half a million dollars. Although she is the recipient of a large income under a trust declared for her by her father, and another trust which she

declared for herself out of her own possessions, she is penniless in Switzerland and is being provided for by her brothers and sisters.

Now, it seemed to me that a case such as hers ought not to be one in which the United States, representing us all, would deprive her of her property, as only by a legal fiction is she not a citizen of the United States. She is just as much in reality a citizen of the United States as any of us is. She was born here; and, as I have said, she has always resided here. Her children are here and her grandchildren are here, and if the Alien Property Custodian's taking over all of her property shall be continued and her property shall be forfeited to the United States, or be used for the purposes that I understand the funds in the hands of the Alien Property Custodian are to be used for, that is to answer claims of American citizens against Germany, the result will be that, although her citizenship, as I have said, is just as good as mine and just as good as that of any other American-born citizen, she will lose all of her possessions and her children will also lose the benefit of them. There are no children by the second marriage, but her children by her first marriage and her grandchildren by her first marriage are all American born and have always resided here, and they will lose it, and it will not pass to them either by her will or by devolution, as provided by our law in Pennsylvania.

So it seemed to me that such a case as this was one in which the alien property act ought not to operate, and so I provided by this bill that I drew "that no American woman born in the United States of American parents, also born in the United States, and who prior to April 6, 1917, shall have intermarried in the United States with a subject of the German Empire or a subject of the Empire of Austria-Hungary, and at the time of such marriage was living in the United States, shall be deemed or held to be an alien enemy as the result of the war between the United States and the German Empire and between the United States and the Empire of Austria-Hungary." Then, the subsequent sections provide the machinery for getting the property back by a claim before the Alien Property Custodian and his return, with an opportunity to go into the United States district court to establish the claim for her property.

The CHAIRMAN. Why do you say "American parents, also born in the United States"? What does that add to the situation? If the parents are American citizens, why is it necessary that they should be also of American birth?

Mr. SCHAFFER. I do not think it is. I simply put that in my bill because that was the fact in my particular case.

I thought there might be a case in which people of foreign birth had been in the United States and the child had been born here and that child, while born here, had gone back to either Germany or Austria-Hungary. I think I was overly cautious in that respect. I see no reason, if that is the view of the committee or of the chairman, why citizenship ought not to be enough to establish the citizenship of the person whose property was taken over. I was simply following the facts in my own particular case. I wanted to draw a general act to keep out of the way of special legislation. We have a constitutional provision in my own State against special legislation, and while I know there is no constitutional provision of that

kind in the Constitution of the United States, yet I know special legislation is very difficult to put through here, and I wanted to draft a general law which would reach everybody with a case similar to that of my own client.

The CHAIRMAN. Was this property taken over by the alien property custodian in the form of liquid assets, or was it corporate property or property which was engaged in manufacture, or anything of that kind?

Mr. SCHAFFER. There was more than $60,000 in cash taken over. Then there is a long list of securities which she held, stocks and bonds of various corporations which she had inherited, or purchased with her savings, with her own income. Her income amounts, I think, to about $60,000 a year.

The CHAIRMAN. It was not property invested in a plant which was being operated?

Mr. SCHAFFER. No, sir. And then too in the funds taken over there were $73,000 worth of Liberty bonds.

Mr. BARKLEY. Are any of these securities at all in German industries or German corporations?

Mr. SCHAFFER. No, sir; not a share.

Mr. BARKLEY. They are entirely in American corporations in the United States?

Mr. SCHAFFER. They are entirely in American corporations.

Mr. BARKLEY. I notice you use the language in the bill, "Shall not be deemed an alien enemy as a result of the war." Would it not be better to change that a little so as to say "shall not be deemed or held to be an alien enemy within the meaning of the act creating the alien property custodian"? There might be some other relationship that might exist that we would not want repealed.

Mr. SCHAFFER. I think that is a very good suggestion, and I would not have any objection to that at all.

Mr. BARKLEY. In other words, what I mean is that as a matter of general law she is a German subject?

Mr. SCHAFFER. Yes, sir.

Mr. BARKLEY. You do not want to secure a permanent repeal of that law so as it affects the entire situation, but only within the meaning of the act which took over the property?

Mr. SCHAFFER. That is correct. I endeavor to embody what you have in your mind in another section of this bill, but I did not do it as well as your suggestion does it. I endeavor to do that in the second section of this bill, but I think your suggestion does it in a better way.

The CHAIRMAN. The Winslow bill put in the same provision.

Mr. SIMS. Taking your statement as including all there is involved in the case, it seems to me no one could have any objection to this particular relief which is asked for, so it seemed to me that it would be much easier to get a bill through applying to this one particular case rather than to try to enact a general law that might bring so many different objections that might not apply to this particular case, as Mr. Barkley has suggested. I do not see any reason why we could not pass a private bill to give relief of this kind and not make it a general law. I only suggest that as a possible way of securing prompter action and having less delay.

Mr. SCHAFFER. If that can happen, I will be very glad to do it, speaking now particularly of the client I represent.

Mr. JONES. In that case Congress would be the court and jury and you would save the delay and expense of going through this other procedure.

Mr. BARKLEY. Still, if there are a number of cases of that same kind it would be a tedious matter to get through a separate bill covering each one of those cases; but if you could make the language general enough to cover all the meritorious cases that ought to be included, without including some that might get through a loophole.

Mr. SIMS. This is in the nature of a war claim, and Congress has always had jurisdiction to pass private war claim bills running into the hundreds of thousands of dollars.

Mr. SCHAFFER. I have no objection to taking that course if the committee thinks that is the proper course to take and if we could secure the relief by the passage of such a bill.

Mr. SIMS. Your statement to the effect that this lady is penniless has appealed to me as indicating that there ought to be some relief given in this particular case as quickly as possible.

Mr. MONTAGUE. I suppose there are a number of other similar cases.

Mr. SIMS. There may be others.

Mr. MONTAGUE. I know of one case of that kind that I think falls in that same category.

Mr. COOPER. Did I understand you to say that among the properties taken over by the Alien Property Custodian were seventy thousand and odd dollars of Liberty bonds?

Mr. SCHAFFER. Yes, sir.

Mr. COOPER. Did this lady buy those bonds while she was in Germany?

Mr. SCHAFFER. No, sir; they were bought by her nephew, Mr. Ludlow, my associate in this matter, who is her attorney in fact.

Mr. COOPER. They were bought with her consent?

Mr. SCHAFFER. Yes, sir; with her money and her consent.

Mr. COOPER. Did not that show her spirit and her feeling toward America that she invested that much money in Liberty bonds?

Mr. SCHAFFER. There can not be any question about her feeling for America. She is coming back here to live. She will live here. Her children are all here and her grandchildren are here.

I happened to be in Europe when the war broke out; I was caught in Switzerland instead of in Germany, but she labored under just that unfortunate circumstance that she was in Munich when war was declared.

Mr. SIMS. Is it not a fact that Gen. Von Beulow's wife was an American, and was caught there, too?

Mr. SCHAFFER. I think she resided in Germany. My client never had resided in Germany, but she resided in Philadelphia.

Mr. DEWALT. Where is Prof. Hilprecht now?

Mr. SCHAFFER. I am not certain whether he is in Germany or whether he is with her in Lausanne. I am informed by Mr. Ludlow that he has been in Lausanne since 1917.

Mr. DEWALT. There is no doubt about the fact that he is what is termed an alien enemy, of course. He is a citizen of Germany?

Mr. SCHAFFER. There is no question about that.

Mr. DEWALT. And she, in the contemplation of the act, is also an alien enemy because she has resided in alien territory, and, as you say, her citizenship is the citizenship of her husband.

Mr. SCHAFFER. I think it was the last determination that moved the Alien Property Custodian. I do not think he looked upon her as residing in Germany or being a permanent resident of Germany. I had the case up with Mr. Palmer, and Mr. Palmer so understood.

Mr. DEWALT. I had this thought: It is to be hoped, of course, that Mrs. Hilprecht will not die before her husband. But suppose this property is now decreed to be hers and she, unfortunately, should die. Then, under the laws of the State of Pennsylvania, how much of this property, which is personal property to a large extent, would go to her husband?

Mr. SCHAFFER. I do not think any of it. I suppose he would still be an alien enemy. Of course, his status would be changed after Germany ceases to be an enemy of the United States by congressional action. Then his status would change because Germany would no longer be at war with us.

So far as the income she has under the trusts is concerned, those are declared trusts which pass the income at her death to her children and her grandchildren, and so far as the corpus of the property is concerned that is now possessed by her, and I think no alien enemy could inherit it. The fact is that Prof. Hilprecht himself, I think I am fully justified in saying, wants to come back to the United States. He lived here since before 1888, and he was, as you yourself probably know, one of the most famous professors of the University of Pennsylvania. He was the professor who made the explorations at Babylon and Nippur, and he wants to come back here and live here—spend the rest of his life with Mrs. Hilprecht.

Mr. DEWALT. I do not quite follow you in saying that under the laws of the State of Pennsylvania the mere fact that Prof. Hilprecht is an alien enemy would deprive him of the right of inheritance of a portion of her estate. I follow you this far, that if Mrs. Hilprecht should die to-day, or, say, die immediately after this property was restored to her, so far as his interest in the estate of Mrs. Hilprecht is concerned that the Alien Property Custodian would still have charge of and possession of any sums which would come to him under the laws of the State of Pennsylvania; but I do not quite follow you when you say that the mere fact that he is an alien enemy would deprive him of his right to a portion of her estate under the intestate laws of Pennsylvania.

Mr. SCHAFFER. I do not think it would, if you mean after the conclusion of peace with us. But, as I understand, the German courts' holding which, in fact, is in the case in Pennsylvania that involves the question as to the ownership of part of the Coleman ore banks at Lebanon, I think that precise question is in that case, and as I understand it, the holding is that Germany would recognize no right of an American to inherit through a German, and the same rule would apply to this proposition. But it is my impression, and I have so advised clients, that no alien enemy has any heritable qualities under the Pennsylvania act, just as I have advised clients that no enemy alien can hold real estate in Pennsylvania under the intestate laws of Pennsylvania.

Mr. JONES. She would have to be an enemy.

Mr. DEWALT. It may be that I am entirely at fault, but I know of no change under the inheritance acts in the State of Pennsylvania which would deprive the husband, although he was a German citizen, of the right of his share to the estate of his wife, except under the provisions of the alien custodian act.

Mr. SCHAFFER. Which would, of course, take it over.

Mr. DEWALT. It is merely in the nature of custody. The purpose of the alien custodian act was to keep from the alien enemy any property and prevent it getting into Germany, or the proceeds thereof getting into Germany.

Mr. SCHAFFER. Yes, sir.

Mr. DEWALT. Now, if Mrs. Hilprecht, after this property was restored to her under the provisions of this act, were to die, and Prof. Hilprecht was still in Germany, then the Alien Property Custodian would have the right of custody of his share in the estate.

Mr. SCHAFFER. I think there is no question about that; yes, sir.

Mr. DEWALT. But nevertheless the right of the property would be in this German citizen?

Mr. SCHAFFER. I do not know what the congressional policy will be, but I was taking it for granted that when the peace treaty is finally signed and the proper legislation from Congress follows it, the reciprocal rights of German citizens and American citizens will be defined in the treaty, and therefore it seemed to me that was a question that would arise at that time. What I meant to say was this, that at least until the time when this peace treaty is concluded between Germany and the United States he could not claim the property under our intestate laws.

Mr. JONES. Will it not work itself out? Suppose this bill becomes a law and she receives her property back and she should die, and then there is a status of peace declared, then whatever share of the estate would go to the husband would be determined by the alien custodian law.

Mr. SCHAFFER. Yes, sir.

Mr. JONES. If in the meantime peace is declared it will be regulated by the status of the relationship itself as it is determined under the peace treaty.

Mr. SCHAFFER. That is what I thought.

Mr. SIMS. In any private bill that is passed there can be a limitation put on it as to distribution. I simply throw that out as a suggestion, that it would be very easy to put any limitation upon it.

Mr. DEWALT. That was the thought in my mind. There are hundreds of cases of this kind, and this act would apply generally to all similar cases, and there might be circumstances arising in the nature of that which I submitted to you, and if this state of war should exist for a considerable time it might be that that situation would occur. I merely throw that out as a suggestion.

Mr. SCHAFFER. If the committee thinks that this matter could be handled better by means of a private bill, I have no objection to putting it in that form. My thought was—and I may not be informed about it at all—that there would be more difficulty in passing a private bill. Private bills are hard to pass under the best of conditions, and if there were a great many of these claims made it

might be that no private bills could be passed at all. It seems to me that an American woman circumstanced such as my client—it seems to me in such a case there might be a difference. It seems to me that an American woman who falls in love with a man from a foreign country who lives here and who expects to live here, and she expects to live here always, and she marries him in this country and continues to live here with him, considering the equities of the matter, a woman under those conditions ought not to lose her citizenship and ought not to be in the same category, at least, with a woman who marries a foreigner of any nation in his own country or goes to live with him in his own country. In other words, this man expected to always live here with her. He had lived here during the bulk of his life, and he expected to live here during the remainder of his life.

Mr. DEWALT. What is the intention of Prof. Hilprecht, to come back to this country to live?

Mr. SCHAFFER. Yes, sir; that is his intention.

Mr. BARKLEY. Was any property belonging to Mr. Hilprecht taken over?

Mr. SCHAFFER. Yes, sir; all he had was taken over.

Mr. BARKLEY. But it is not involved in this bill?

Mr. SCHAFFER. Not at all; and I believe he ought to work out his own salvation entirely separate from her. I may say to the Committee that Mrs. Hilprecht was the daughter of Samuel A. Crozer, who was a leading citizen in our part of the world. It is a very large family and no people could have been more patriotic. They have all been my clients for many years.

I am only endeavoring to work out a solution of her situation with the thought in my mind and with the thought in the family's mind that this money, in reality, before a great while, will pass to the children, because I think Mrs. Hilprecht is about 65 years of age. I think she was born in 1856. The thought in my mind and in the family's mind is that this property eventually is to go to her children and her children's children, and that the Government of the United States would not want to deprive them of their right of succession from their mother.

Mr. BARKLEY. Does the $500,000, being the aggregate value of the property, include all of that in trust, or some that is not in trust?

Mr. SCHAFFER. No, sir; the trusts could not be taken over so far as the corpus is concerned, because it goes to her children and grandchildren. It only includes the money she saved out of the income or what she acquired. Since the war broke out an uncle of her's has died, and she inherited $125,000 from her uncle.

Mr. DEWALT. The interest on this fund is in the hands of the Alien Property Custodian?

Mr. SCHAFFER. It is paid over to him as it accrues, every dollar of it.

STATEMENT OF HON. THOMAS S. BUTLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. BUTLER. Mr. Chairman, let me add my word to what the Attorney General has said concerning this family. He did say there was no family in our section of the State better known than the

Crozer family. They have always lived at Upland, where they established great works nearly two centuries ago. He said there was no doubt of the loyalty of every one of them. He spoke the truth when he spoke thus of this distinguished family.

They have not only worked, but they have given largely of what they produced to other people. They have endowed schools and contributed largely to institutions where helpless people are. They have themselves built institutions for people who are sick and unfortunate. One large institution is the Crozer Hospital, at Chester, endowed by members of this family, constructed and maintained entirely by the family. They have also endowed the Crozer Theological Seminary, a great Baptist institution, where young men may be educated without cost to themselves.

I want, moreover, to say there is no doubt about the unstinted and generous loyalty of these people, who have lived in my part of the country for two centuries. I does seem to me that there ought to be some way provided by which Mrs. Hilprecht can have back her own money. As Mr. Schaffer has said, the fund itself is in trust—goes to her children and not to other people, so that not one dollar of it will go from this country.

Mr. JONES. What is your opinion as to putting this in the shape of a private bill?

Mr. BUTLER. Knowing what becomes of private bills, I suggest to you when you come to the graveyard gates that you go on by. Do not stop there.

Mr. SIMS. With no settled condition of peace existing now and nobody knowing when it will, it does not seem to me that the rights of this woman should be held up and that she should be made to suffer because Congress can not agree on what to do or when to do it, so far as a general proposition is concerned. If this were put in the form of a private bill it would not prevent a general law from being passed at the proper time, and why should we hold up a case like this, in view of the uncertainty and the probable delay in the enactment of a general law?

Mr. BARKLEY. Any one man can object to a private bill and it would go off the calendar.

Mr. BUTLER. The only question is whether or not they have jurisdiction.

The CHAIRMAN. It will have a privileged status if it can be reported and put on the calendar and brought up on Calendar Wednesday.

Mr. BUTLER. It will have a privileged status, if there is the authority for its report from this committee.

The CHAIRMAN. I think myself you are acting wisely in putting it in the form of a general bill.

Mr. BUTLER. We think so, and if the committee wishes and sees fit to cover other cases, we do not have any objection whatever. The purpose of this bill is to bring back to this American woman the income of the estate which belongs to her.

Again let me say I know these people very well! They have done much good and spent much money in charity, and it does appear to me that there can be no possible objection to this measure intended to benefit this American woman who has lived here all her life and will continue to live here while she does live.

And the last word I have to say is this, that no people in our part of the country have done more good with their benefactions than the Crozer family.

Mr. BARKLEY. Has the opinion of the Alien Property Custodian been obtained?

The CHAIRMAN. The Alien Property Custodian is here by a representative, and we will hear him on the bill before the hearings are concluded.

Mr. BUTLER. Mr. Chairman, may I make this request, that before you conclude this hearing you will hear Mr. Vail. After Members of Congress have been heard I should be very much indebted to you if you will hear Mr. Vail.

The CHAIRMAN. We can hear Mr. Vail now.

STATEMENT OF MR. R. R. VALE, MILFORD, DEL., OFFICE 1540 LAND TITLE BUILDING, PHILADELPHIA, PA.

Mr. VALE. Mr. Chairman and gentlemen of the committee, I represent here to-day the children of Adolphus Keppelmann, late a resident of the State of New Jersey. Mr. Keppelmann came to this country from Germany as a boy. Here he grew to maturity, here all his children were born, here all his children were educated, and here he died. He was respected and honored in his community, and left a large estate. One of those daughters——

Mr. MONTAGUE. He was not a naturalized citizen?

Mr. VALE. He was a naturalized citizen and uniformly voted and took an active interest in the affairs of his adopted country and his home community.

One of his daughters married a citizen of Switzerland. Two of his daughters married residents and citizens of Germany, and one married a citizen of Austria-Hungary. They have lived abroad, and when the war came on their desire was to return to the country of their birth, one of them has already returned to this country, and all of them will return to this country just as soon as they possibly can. Here their children will be educated and grow to manhood and womanhood.

I have assumed, gentlemen, that if there was a meritorious case this is of that character, such as was the case presented by the attorney general of the State of Pennsylvania. But I suggest, however, since there are hundreds of cases of American girls born in this country, and who married, through the dictates of love, foreigners, that if relief is to be given to them it should be predicated on some broad, general ground. May I suggest that it has no better basis or firmer foundation than that of citizenship, let the statute apply to girls born in America of parents either native born or naturalized. If this committee should desire to restrict the application of the statute it should provide that the citizenship be followed and supplemented, now that war has ended and peace is about to be declared, by a residence in this country and return to this country.

It is submitted there can be no general rule formulated but that will work hardships unless you base it on the broad ground of citizenship, born in this country. If that is to be a controlling concern, will you not by incorporating it into the general law meet every

meritorious case? Is the fact of place of marriage to be determinative? Let it be so. Many of them who here married would and immediately did go abroad and have there since resided. They may have married in Switzerland, or in any country, and should not now be penalized for having chosen the place of their marriage with so little foresight.

Nor can it be justified that they shall be born of American parents who likewise were born of American parents, for thus you would exclude from the operation of the law a girl born in this country of a Frenchman or of an Englishman, of those who were our allies in this late war. Thus you would exclude the children of allies without reason and accomplish no definite purpose by the exclusion.

It has occurred to me that there are certain acts already on the statute books which determine citizenship. There is no difference between or the rights resulting from citizenship however acquired. He who is born in this country has the same rights of citizenship as he who was naturalized. All are free and equal before the law, who are citizens, irrespective of the method by which they acquired citizenship. If it is deemed wise to restore to former citizens their rights in property of which a state of war alone has deprived them, it is suggested that no disinction should be made between those who were born in the United States of native-born parents and those born of naturalized parents, or of even unnaturalized parents. This because citizenship results from the fact of birth in the United States and not from the citizenship or alienage of the parents. If the Butler bill were to be amended by the interpolation of the phrase "That no woman born in the United States and who prior to April 6, 1917, shall have intermarried with a subject of the German Empire, or a subject of the Empire of Austria-Hungary, shall be deemed to be held," and so forth, you have, gentlemen, no limitation resulting from either the fact of the place of marriage or of the nationality of the parents or of the manner in which the parent acquired citizenship; and you base the relief alone on the fact of citizenship in the United States at the time of the marriage.

The CHAIRMAN. The Winslow bill does not make such limitation as to place of marriage.

Mr. VALE. Mr. Chairman, I so observed in the Winslow bill that there is no limitation of that character; and the Winslow bill, as a matter of fact, is prepared on a broad general plan, and in truth has no exception other than "of American parents" to the citizenship of the United States.

Mr. DEWALT. Your amendment would also cut out a limitation as to birth?

Mr. VALE. "Of citizens of the United States," let that be inserted, if in the wisdom of the committee it should be included after the phrase "born in the United States."

My suggestion in regard to that, Mr. Dewalt, is this: The term "citizens of the United States" covers two possibilities of acquiring that citizenship, birth, or naturalization. If, then, you say "born in the United States," without more, you accomplish that end. If, however, you say "born in the United States of American parents," then, of course, you restrict the means by which the citizenship of the parent may be acquired to the one method of birth, and deny a citizen born rights because the parent was not native born, even though

such parent was a naturalized citizen. But if you say "born in the United States or born of citizens of the United States" you make the act apply to all citizens irrespective of the fact of citizenship or alienage of the parents as well as to all citizens born of native born or naturalized citizens irrespective of the place of their birth.

So far as that clause is concerned, let me add, as I said in the beginning, that it should be broad as the last reading, for it should include, if any, all citizens born in the United States irrespective of the citizenship or nationality of the parents, as well as all citizens born of American parents irrespective of the place of their birth, and this because under the statutes of the United States the rights of American citizenship are so conferred. General statutes in a contingency of this kind, it would seem, should be evolved for the protection of all in similar condition and for the relief of all suffering similar hardship. But, if this committee in its wisdom adopts the method of a private bill, I am sure the clients represented by me can present as worthy a claim as probably those presented by any other. For, like the family of Mrs. Hilprecht, the Keppelmann family has been a family in the Oranges known for years for their generosity, and they have likewise been known for years for their devotion to American institutions. This results from the one particular fact that the young Adolphus came to this country to escape the tyranny which the Prussian Government was then seeking to inflict on its south German countrymen. When that revolt against Prussia failed and his hopes grew dim he came to this country to enjoy that freedom of action which his fatherland denied him. Tyranny and choice made him a worthy and respected American citizen. I am going to close my remarks to you with the statement which the honorable chairman suggested at the beginning, that you should not limit this general act "to children born of American parents who were likewise born in America."

The CHAIRMAN. When you revise your remarks you might include the amendment you suggest.

Mr. VALE. I will be glad to do so. Three suggestions as to the amendment of the Winslow bill (12884), are as follows:

First, strike out the words "of American parents," in lines 5 and 6, and insert in lieu thereof the following: "of citizen parents or born of citizens of the United States."

Or, second, strike out the words "of American parents" in said lines.

The objection to the last amendment is that it excludes children born of American parents in foreign countries, even though the parents be there only on a visit. This objection could be overcome by the following amendment, which, it would seem, is preferable to the other two amendments.

Third, strike out the words "of American parents," in lines 5 and 6, and insert in lieu thereof the following: "or born of citizens of the United States." By this amendment all women who were born as citizens of the United States under existing law would be included.

Mr. BARKLEY. How many of these daughters married German citizens?

Mr. VALE. Two.

Mr. BARKLEY. How long ago?

Mr. VALE. I think probably the first one married 15 years ago.

Mr. BARKLEY. Prior to the death of the father?

Mr. VALE. Oh, yes; prior to the death of the father.

Mr. BARKLEY. All of these marriages were prior to the death of the father?

Mr. VALE. All of these marriages were prior to the death of the father.

Mr. BARKLEY. When did he die?

Mr. VALE. He died three years ago.

Mr. BARKLEY. That was prior to the passage of the alien property act?

Mr. VALE. Yes, sir.

Mr. BARKLEY. Had there been any distribution of his estate among these children?

Mr. VALE. The estate was in process of distribution when war was declared and is now in process of distribution. As in the previous case, there were trusts for the benefit of two of the children, and as the result of that the Alien Property Custodian will be in the possession of the income from these trusts.

Now, prior to the declaration of war, the girls were just about to receive their distributive shares, and they created a banking firm in New York, known as Schulz & Ruckgaber, as attorneys in fact for the purpose of collecting those shares, and when the Alien Property Custodian requested that the shares be turned over to him, the banking firm took the position that the powers of attorney were valid and that those shares should first be turned over to them, and then they, in turn, would become the conduits for turning those shares over to the Alien Property Custodian. The question of the validity of those powers of attorney is now pending before the Supreme Court of the United States. As a matter of fact, as you gentlemen all realize, that question has always arisen during the progress and after every war this country has every had, and the Supreme Court of the United States up until the time of the enactment of the alien property act uniformly held that the powers of attorney were valid, so the question involved in this case is whether or not the alien property act has changed that law.

Mr. BARKLEY. Are the husbands of these girls still living?

Mr. VALE. Three of them are at the present time alive. One of those husbands is at the present time living in Abruzzi, Italy, and expects to come to this country in a short time. As a matter of fact, he is more an Italian subject than an Austrian subject.

Mr. BARKLEY. Then as a matter of fact your proposal would leave all these restrictions without reference to these young women who married men who afterwards became by operation of the circumstances of law, alien enemies, and they are, of course, alien enemies themselves. If you put the determination simply on the question of birth, you practically re-Americanize these women who have for 15 or 20 years been living in Germany and Austria as to the property which they have inherited from their father and which they could transfer to their adopted residence, do you not?

Mr. VAILE. No; as a matter of fact, my suggestion, so far as this particular case is concerned, is that they intend to come to this country and here live.

Mr. BARKLEY. That may be true, but so far as the record stands their intention has been indicated by their marriage and leaving the country to become alien citizens.

Mr. VALE. Yes.

Mr. BARKLEY. While they may intend to come back, there may be lots of aliens who have never been in this country who intend to come here after peace is declared, and we could hardly accept that as a criterion by which they could be judged.

Mr. VALE. If you wish to supplement the suggestion I have made by a declared intention to repatriate as a condition before the relief shall be granted——

Mr. BARKLEY (interposing). I am not offering that suggestion, but for all practical purposes these women are just as much alien enemies as if they had never been in the country. If we pass a law lifting the ban as to cases of that sort, we might as well repeal the whole act, it seems to me.

Mr. VALE. If the suggestion may be made, no; and with conviction, because you are simply giving back to an American girl her property, who practically, to all intents and purposes has repatriated herself. You say in effect to her we are not going in times of peace to take from you American property seized as a war measure and remand you in the assertion of your rights to your property to a hostile government of which you are a citizen only by a fiction of law. That is all that is said, except this, that the Government of the United States does not propose to permit the payment of governmental obligations with the individual property of American citizens. It has no effect on the other parts of the alien property act. This statute is not predicated, as you will recall, on the fact of alienage. On the contrary, it is based on the fact of residence within a territory described. In other words——

Mr. BARKLEY (interposing). The effect of your suggestion would be that we would turn over to these women property which might be converted into money and that money taken to Germany or Austria and by them turned over to their husbands and never see the shores of the United States again. While it is derived from American property, it might all be taken to the country which is now our enemy in law.

Mr. VALE. That might happen under any possible contingency at the present time, whether the girl be alien or American born. That which permits the Government of the United States, and has permitted the Government of the United States, to take in custody the property of American girls or any citizens is the fact that the citizen was in Germany or in Austria at the time of the declaration of war. My property, were I there, would have been likewise taken. It is not because she was a citizen in contemplation of the law, or the legal fiction of law, a citizen of Germany, that the property was taken. It was the unfortunate fact that she at that time happened to be within the territorial limits of Germany or Austria.

Mr. JONES. Residing there?

Mr. VALE. Residing there or being there.

Mr. BARKLEY. That would apply to the case presented by the attorney general of Pennsylvania. But in your case, as I understand it, they had actually resided in those countries 15 or 20 years. That

was their home. They were, in fact—not by a legal fiction, but actually—citizens of Germany and Austria-Hungary.

Mr. VALE. What happened in our case was as in most of these cases. The marriage had taken place in America or Germany or Austria or England, and they have there resided, or they live in different parts of Europe or this country. In other words, there has been a divided residence. Take, for instance, the particular clients whom I represent. Some of the time they have lived in Germany, some of the time they have lived in Switzerland, some of the time they have lived in Italy, and some of the time they have lived in this country. There has hardly a summer gone by but that some have not spent some time at their old home, in the old homestead in the Orange Mountains.

Mr. BARKLEY. That time they spent there as visitors.

Mr. VALE. It is true that in contemplation of law they were always citizens of Germany or Austria, but at heart they were always Americans.

I submit again that if any relief is to be given you must come back to the desire first to give and restore to American citizens those rights of which by the accident of war they have been deprived. There is no force in the suggestion made by the gentleman as to the possibility of American property going abroad. The alien-property act did not confiscate their property. Prior to the war the citizens' property went abroad, and war and its necessities alone demanded that the Government of the United States conserve and hold the property until the restoration of peace. Furthermore, that objection can readily be overcome by merely setting forth as a condition that they shall come back to America; that they shall by proper declaration say that they wish to repatriate themselves and become American citizens—but the wisdom of this may well be questioned.

Mr. SIMS. It was not my understanding that the alien property act was intended as an act of confiscation?

Mr. VALE. Not at all.

Mr. SIMS. But rather as an act of protection and preservation than otherwise, that the property might be saved to those whom it really belonged to.

Mr. VALE. I am going to dwell on that, as I said that it was an act not of confiscation, not of expropriation, but on the contrary that it was an act of sequestration, for the purpose of mere custody, so that those from whom it was taken and who are ultimately and properly entitled to it might be properly protected in their rights under a status of peace.

Mr. BARKLEY. Was not one of the objects also to keep this money which might come from this property from getting into the enemy's hands to be used against us in war?

Mr. VALE. In a state of war. That was the prime motive, but the war is over and——

Mr. MONTAGUE (interposing). Not only that, but also to prevent the enemy from availing themselves of the credit attaching to the ownership of the property.

Mr. VALE. Yes, sir; but we are here considering legislation with war ended and peace restored.

Mr. DEWALT. You spoke of trusts being established; they will be for the children, I suppose.

Mr. VALE. Yes, sir.

Mr. DEWALT. These chidren were born in the old country?

Mr. VALE. Some were born here and some were born over there.

Mr. DEWALT. Then, these ladies have only a life estate, with the remainder to the children?

Mr. VALE. In two instances that is the case, with the remainder to the children, and in default of children, to the brothers and sisters.

Mr. DEWALT. How then would the provision of this act affect these trust estates; that is, this remainder over?

Mr. VALE. The Attorney General suggested it was a ruling, as I understand it, by the Alien Property Custodian's office, namely, that they felt they were entitled only to the income and in no instance to the principal or corpus of the estate. So that, never at any time could come into the hands of the Alien Property Custodian the principal or corpus of the trust estate.

Mr. DEWALT. Nothing could come into the hands——

Mr. VALE (interposing). Of the Alien Property Custodian other than the principal or the corpus of the trust estate. He has in each instance been making a demand for the income alone. I know that has been the fact in these particular estates, that at no time has the corpus ever been demanded. So no complication can arise from the general provisions of the bill in regard to that point.

Mr. DEWALT. Then would the children and the grandchildren have the same protection in regard to the estate you represent, Mr. Attorney General?

Mr. SCHAFFER. Yes, sir.

Mr. DEWALT. Where do those children and grandchildren reside?

Mr. SCHAFFER. Here in the United States. With the exception of the son they have never been over. The grandchildren have never been over at all.

STATEMENT OF MR. ROBERT CRAIN, ATTORNEY AT LAW, MUNSEY BUILDING, WASHINGTON, D. C.

Mr. CRAIN. Mr. Chairman, I happen to represent a very simple case in connection with this matter. My client is a woman born in America of American parents. Fifteen years prior to the war she married a German subject. During those 15 years their time has been divided between America and Germany until the outbreak of the war, since which time she has been abroad.

In reading over the bills it seems to me that her case would be covered by the Winslow bill.

This woman owned personal property which was invested in American corporations, and the property was sold under the Alien Property Custodian act. Of course, it all narrows itself down to the simple proposition as to the attitude of the American Congress toward American citizens who were married to German subjects at the time of the war and who own property in this country.

Mr. MONTAGUE. Were they American citizens at the time of the war?

Mr. CRAIN. This woman, I suppose, would have her status fixed by the status of her husband, naturally.

Mr. MONTAGUE. If he was an alien, she was an alien?

Mr. CRAIN. They divided their time, staying months and years in America and then sometimes going back to Germany. I am not sufficiently advised to answer the question directly. But regardless of that fact, and without attempting to suggest to the committee the legislation it may adopt on this important question, speaking for myself as an American citizen, I would feel that it was in the way of punishment to an American woman who married a German subject 15 years prior to the war to have her property taken away from her when she has been perfectly loyal to America and has been guilty of no crime or no disloyal act.

I take it for granted that when this Congress comes to frame an act it will not do so for any special case. It will not frame an act for to-day or for to-morrow, but with a broad vision, looking with the eye of justice on all these cases and looking to the future both of America and other countries, will deal with it in a broad and patriotic way. This war soon will be at an end, technically, and then friendships will be restored between the nations of the world. When that friendship has been restored, technically, I hope that an American girl who 15 years before the war married a citizen of a foreign country will not be made to feel that she has been done an injustice by the country of her birth and of the birth of her parents and grandparents by the taking away of her property because of conditions over which she had no control.

STATEMENT OF MR. EDWARD A. THURSTON, FALL RIVER, MASS.

Mr. THURSTON. Mr. Chairman and gentlemen of the committee, I represent Margaret de Stuers Oberndorff, who was the daughter of the Dutch ambassador to Paris. She is a married woman, 42 years of age, and with her three children is now living with her father's people in Holland. Her history is as follows:

Her father, Alphonse Lambert de Stuers, was a citizen of Holland. In 1870, when a young man, he was a member of the Dutch legation in Washington, U. S. A. While there he met Margaret Laura Carey, of New Mork City. They became engaged and were married at her father's house in New York City in 1875.

Shortly after the marriage he was transferred to London, where he held the position of first secretary of the Dutch legation. From there they went to Paris. They had three children, and Margaret de Stuers was born at Versailles, France, in 1878. (The other two children were boys; one died several years ago, and the other is now living in Holland.)

De Stuers was then made Dutch minister to Spain, and he lived in Madrid until 1886. In 1886 he was made Dutch minister to Paris, and he held that position uninterrupedly until his death in 1919, less than a year ago. Occasionally he used to revisit America, as he had many friends here with whom he kept in constant communication. At the outbreak of the war, in 1914, he was at his post in Paris and remained there, with German airplanes dropping bombs around him, during the entire war. At the time of his death he left practically no property except his house in Holland.

His daughter, Margaret de Stuers, on January 2, 1904, when the relations between foreign countries were friendly and amicable,

was married in Paris to a citizen of Germany, Alfred von Oberndorff. At the time of her marriage she was a subject of Holland, although with strong American affiliations, as she herself by birth was half Dutch and half American, and she had been brought here by her mother and knew and liked her American relatives. They had three children, Marie Theresa, now aged 15 years; Carl Alfons, now aged 13 years; Elizabeth, now aged 2 years.

At the outbreak of the war she was unable to leave Germany. As soon as possible after the armistice she got out with her three children to Switzerland, thence to Paris, and thence to Holland, where she resides with her father's people. Her two girls are with her and her boy is in Holland at a Dutch school.

From her mother's side of the family she and her brother inherited some real estate on the corner of Sixth Avenue and Seventeenth Street in New York City, of which she owns eight-fifteenths and her brother seven-fifteenths. It is business property, consisting of stores and lofts, and is leased to different tenants. The value of her eight-fifteenths is about $250,000. This property of hers and the rentals have been taken by the Alien Property Custodian. In 1867 her grandmother's brother, a resident of New York, put some property in trust, the trustee to pay the income to himself and wife, and upon his death to distribute the property among his heirs. He and his wife died in 1917. Margaret de Stuers is one of his heirs, and her share is worth about $240,000. This also has been taken by the Alien Property Custodian. In addition there was a trust fund of $60,000 held here for her benefit by a relative; this also has been turned over to the Alien Property Custodian.

This lady was the daughter of the ambassador, marrying Alfred Oberndorff in 1904. They were married in Paris, and they were married when relations between the various countries were peaceful. In this whole transaction there was no thought or idea that anything might happen such as happened when the war broke out. Her marriage with Mr. Oberndorff was purely a love match.

Mr. SIMS. Mr. Oberndorff was a citizen of Germany and has so remained?

Mr. THURSTON. Yes, sir; he is now a German citizen.

Mr. BARKLEY. Have they separated?

Mr. THURSTON. No, sir; she is living in Holland. She left him and went to Holland after the armistice was signed.

Mr. BARKLEY. He is still in Germany?

Mr. THURSTON. Yes, sir.

Mr. SIMS. In the case which the attorney general of Pennsylvania just presented to the committee the lady involved never was a citizen of Germany, but only had that status by reason of being the wife of a German citizen. The same thing is true in this case?

Mr. THURSTON. Yes, sir. I merely wish to say——

Mr. JONES (interposing). In your case the husband was a resident——

Mr. THURSTON (interposing). Of Germany.

Mr. JONES. And lived in Germany.

Mr. THURSTON. And lived in Germany.

Mr. JONES. And his employment was in Germany?

Mr. THURSTON. Yes, sir.

Mr. JONES. In the case presented by the attorney general of Pennsylvania, the husband, while a German citizen, was living in America and employed in America.

Mr. THURSTON. So I understand.

Mr. SIMS. But he was technically a German citizen.

Mr. THURSTON. Yes, sir. This bill provides for neutrals. This bill is also broad enough to cover the American girls who have married Germans. It is a very broad bill in its provisions.

Mr. BARKLEY. How do you construe your client to be a neutral?

Mr. THURSTON. I do not. The property which she inherited was originally American property. She came of neutral parents.

Mr. BARKLEY. I thought you made the statement awhile ago——

Mr. THURSTON (interposing). Pardon me. She came of neutral parents. Her father was a neutral and her mother was an American before she was married. They were married in the United States.

Mr. BARKLEY. Your client, as a matter of fact, was never an American citizen?

Mr. THURSTON. No; she was not. She was the daughter of a neutral and an American citizen.

Mr. BARKLEY. Her father happened to be a neutral, and that placed her citizenship in that country?

Mr. THURSTON. Her citizenship followed that of her husband, in Germany, according to the Dutch law.

This bill takes in the cases of a great many of the American girls who have married foreigners; and I want to say, Mr. Chairman and gentlemen of the committee, at the very outset, that this is not a special bill, this bill would take in, so far as the neutral aspect of it is concerned, as I understand it, the neutral cases. I understand there are not very many of those cases.

I do not know whether it will be the disposition of the committee to consider individual cases or the general principle, but I wish to call your attention to the fact that this was not a war of individuals. This was a war between countries. The property was seized by the Alien Property Custodian under the act at once. There was not time to consider or differentiate. The purpose of the act was to prevent the use of this money against us. It was to be kept out of the fight, and was to be held during the war.

Mr. COOPER. I am not just quite clear in regard to this case. Your client married a subject of Holland?

Mr. THURSTON. No; she married a subject of Germany. My client, a resident of Holland, married a German and became thereby an alien enemy, following her husband's citizenship. She came of parents, one of whom was an American, and the other a neutral.

The principle involved in this whole matter is whether or not this country intends to take the property of private persons to pay the debts which really are debts of the German Government.

If the committee will permit me, I have prepared a very brief statement which it seems to me might well go into the record in connection with this matter.

The CHAIRMAN. We will be very glad to have it inserted into the record. Can you tell us the substance of it?

Mr. THURSTON. The substance of the argument which I should like to present to the committee is based on the theory that private

property, and particularly fixed property, like real estate which has been taken by the Alien Property Custodian should not be held to pay the debts which Germany is responsible for during the war.

I wish to go one step further and say that the Alien Property Custodian himself, in his report, has differentiated between the two classes of property, friendly property and unfriendly property, and by unfriendly property he means those great aggregations of capital financed by the German Government, which he claimed to be nests of spies, and the steamship companies, and enterprises of that sort, which have been liquidated. The friendly property was that property consisting of real estate and individual personal property which was not in any way used for the purposes of the war. For years before the war the Baltimore & Ohio Railroad, the Pennsylvania Railroad, and, I think, other roads had fiscal agents in London and Berlin selling their securities, and the people in those countries bought those securities and invested their money in this country in those securities because we wanted them to.

They were seized and held by the Alien Property Custodian so that the income could not be used for war purposes during the war. It was not property in the sense that munition factories or concerns making materials to be used in the war were property; factories and concerns which had been established here with hostile design.

It seems to me, in looking at the whole proposition as to the kind of bill the committee will desire to report, at the very outset it might be well to consider these two classes of property, the friendly and the unfriendly, and in the friendly property, I assume, comes the property represented by the gentlemen who have preceded me here this morning. It consists of the property of women who lived in this country largely and who married these people abroad at a time when we were encouraging those marriages, and in many cases—in fact in all cases represented here—was left in this country, and probably most of it will remain in this country. It seems to me that it was not in the contemplation of the act that property of this kind should be taken to pay these claims.

I understand the Alien Property Custodian has something like $600,000,000 or $700,000,000 worth of property in his possession.

I may say, speaking in behalf of my own client, that I assume the property which the Alien Property Custodian is keeping, the property of women such as my client, persons who were neutrals before they married Germans, would be a very small amount, and to restore it would make no difference whatever, and I assume that repaying the property of these women would not in any way leave the department in such shape that claims could not be taken care of. He has a lot of property which came from sources which I assume this Government will eventually use for the payment of debts.

The CHAIRMAN. You notice the two bills differ in the point of time as to marriage.

Mr. THURSTON. Yes.

The CHAIRMAN. Have you any suggestions as to that?

Mr. THURSTON. The time mentioned in the Winslow bill, July 28, 1914, marked the outbreak of the World War. I think that a woman who married a resident of Germany before this date and at a time when all countries were on friendly terms with Germany could not be fairly held to have anticipated what came afterwards.

(The statements referred to by Mr. Thurston are as follows:)

STATEMENT SUBMITTED BY EDWARD A. THURSTON, FALL RIVER, MASS., IN RE H. R. 12884, BILL RELATING TO NEUTRAL AND AMERICAN WOMEN INTERMARRIED WITH ALIENS.

The Alien Property Custodian statute became law on October 6, 1917. By section 6 of this statute, the Alien Property Custodian was authorized "to hold, administer, and account" for the property taken under the general direction of the President, as provided in the act. It was also provided, by section 9, that after the end of the war the disposition of this property should be settled as Congress should direct. Congress has the power to determine at any time what shall be done with it, as the Sixty-fifth Congress which enacted the statute had no power to take away from its successor, the Sixty-sixth Congress, the power to legislate upon this subject any time that it chose, either before or after the technical end of the war.

The reason why individual alien enemy property was seized under this statute was stated on November 14, 1917, by the Alien Property Custodian, in the Official Bulletin, as follows:

"The purposes of Congress are to preserve enemy-owned property in the United States from loss and to prevent every use of it which may be hostile and detrimental to the United States. The duty of the Alien Property Custodian is to protect the property of all owners under legal disabilities to act for themselves. When a license to permit enemy-owned business is not granted, the Alien Property Custodian exercised the authority of a common-law trustee: There is no thought of a confiscation or dissipation of property thus held in trust."

This declaration of the purpose of the act was merely declaratory of the modern civilized theory of the treatment of private property taken in war time. The modern theory of war is that war is waged, not against individuals but is a relation between State and State; that individuals are enemies only accidentally, and that their private property is immune from capture and confiscation. One of the Hague conventions categorically provides that "private property can not be confiscated." (Hague convention VI of 1907, arts. 1–5.)

This modern theory that private property should not be confiscated is not in conflict with the theory that it should be seized at the outbreak of the war. It is rightly seized and sequestered for the purpose that it or the income from it may not be used by the enemy as one of its resources during the war. But to confiscate it when the conflict is ended is a different matter. If when the war is ended it is confiscated for the purposes of paying the war costs or expenses or claims of the victor, it places the penalty of the war on the individuals whose property was taken, and to that extent it lets go free the Government or State against whom the war was made. It changes the nature of the war from a war against the State into a war against certain individuals.

Acting upon the thoroughly just theory of seizure and sequestration, the Alien Property Custodian, under authority of the statute of October 6, 1917, seized and sequestered alien property aggregating in value approximately $500,000,000 or over.

As to the kind of property seized, owing to the necessity for haste and the impossibility of making any distinction in those days of confusion, everything was seized upon which the Alien Property Custodian could lay his hands. The act made no distinction as to the kinds of property which were to be taken, and no distinction was made in the taking of property. Property which might be used against us and property which could not be used against us was indiscriminately seized and sequestered. I find no fault with this seizure. Time was of the essence, and we could not stop to make distinctions between different classes of property.

It takes no more than a casual glance, however, to see that the property as taken could easily be divided into several classes. For example, ships if not immediately seized could be at once turned by the enemy into instruments of warfare to be use against our troops. It is possible also that there existed here subsidized German corporations planted in our midst and which, by the aid of Government assistance. were intended to undersell and undermine our own industrial development in the manufacture of articles necessary for use in time of war, or in those articles which come in direct competition with German industry. On the other hand, there was also seized land located in this country inherited from their American next of kin by women who, at a time when this

country was on the most friendly relations with Germany, had happened to marry a subject of the German Empire and thus technically acquired a German citizenship under the old common-law theory that the husband and wife are one and that the citizenship of the husband controls. Stocks and bonds in which such persons had invested their savings, trust funds inherited by them, all were taken.

In regard to the seizure of the latter class of property, the general modern custom is stated in Phillimore's International Law, third edition, volume 3, page 148, that with respect to immovable property—lands or houses of the enemy—the general rule of civilized States appears to be that this kind of property is never confiscated; but that in cases where the income of the estate would otherwise be sent out of the country to augment the resources either of the private or public wealth of the enemy, it may be sequestered during the pendency of the war. The same principle likewise applies to shares of stock, bonds, and other forms of investmnets in which individual foreigners have invested their savings in this country. Another writer (Hall, International law, p. 420), says that the principle of modern usage is that property can be appropriated of which immediate use can be made for warlike operations by the belligerent, or which if reached by the enemy would strengthen the latter either directly or indirectly; but that in property not so capable of immediate or direct use, or not capable of strengthening the enemy, is not appropriated.

I have in the preceding statement discussed this bill (H. R. 12884) on broad general principles. I appear, however, only in support of that portion of it which provides that the alien property custodian shall now return the property in this country which he has seized and sequestered, belonging to women who prior to their marriage were subjects of a country which remained neutral in the war, but who prior to the outbreak of the World War, and at a time when all countries were at peace, had happened to marry a subject of the German Empire or of the Empire of Austria-Hungary.

The amount of property sequested by the Alien Property Custodian is, as I have already stated, in value approximately $500 000,000 or more. If the property is now returned to neutral women, such as I have described above according to the best of my information it will probably affect less than one-fifth of 1 per cent of this amount. The property was seized and sequestered by the Alien Property Custodian not for the purpose of confiscation, but so that during the conflict the income should not be sent abroad as a possible aid to the enemy. In this particular case in which I am interested, the property consists of real estate and personal property inherited from her American next of kin by a woman who, prior to her marriage, was a subject of Holland. Her mother was an American girl, her father a native of Holland. Unable to leave Germany upon the outbreak of the war, she was obliged to reside there up to the time of the armistice. As soon as it could be done after the armistice she, with her three children, the eldest 15 and the youngest 2, left the country and rejoined her father's people in Holland.

At the possible expense of repetition, I wish to say again that I have no quarrel with the public policy by virtue of which this property was seized at the outbreak of the war. It was taken so that the income could not run the chance of finding its way to aid and strengthen the resources of the State we were fighting. It is a different matter, however, now to retain it. If we do not return it we deliberately turn back our pages of history to the barbaric policy of placing the penalty of the war upon individuals and letting the State, against whom we waged the war, go free. In this particular case we turn our guns upon a helpless woman, who was an enemy only by a technicality, and we let off, without even a demand for reparation, the State against whom we waged the war. For these reasons I believe and hope that this property will be returned to its owner by the American Government.

Let me end by stating in summarized form the points which I wish to make:

1. The purpose of seizing and sequestering private alien property at the outbreak of the war was to prevent it, or the income from it, accruing to the enemy during the conflict, and thus adding to the resources of the nation with whom we were engaged in conflict.

2. There was no intention at the time of seizure not to return this property when the conflict ended. If this should not be done it will be a return to a barbaric principle now discarded by civilized nations, and which is contrary to the purpose of the act by virtue of which the property was sequestered.

3. Not to return this and similar property is equivalent to placing the penalty of the war upon individuals and letting the State with which we were at war go free.

4. It is no defense to say that the unfortunate individuals whose property has been taken can obtain reparation from the German Government. No one knows the value of such a claim, and the chances are that if collectible at all it could not be collected for years. The act of our Government would be no different in principle from ordering our troops now occupying German territory to go into private houses, seize the pictures from the wall and the silver from the tables, and turn this property over to our Government to be used for paying the costs, expenses, or claims arising from the war; leaving the victims to obtain reparation from their own Government if they are ever able.

5. If we are to demand money either to pay claims of our own citizens or war expenses, it should be demanded of and paid by the State with which we have been at war.

6. The preceding points apply to the confiscation of any individual alien property to pay the debts caused us and owed to us by the offending State.

7. How much worse, however, would it be not to return the real estate and individual personal property located here and inherited from her American next of kin of the subject of a neutral country, because before the war and when all countries were on a friendly basis she married a citizen of Germany?

8. Leaving aside the reasons of fair play, which I have stated above, and looking at the question, if anyone wishes to, from a totally different angle it will in the future repay us one hundred times over to return this neutral property. We shall need the friendship of these neutral countries. In trade relations and in other ways there is no doubt that there will be many occasions when we shall want their friendship. A statute of this nature passed in broad general terms and looking ahead into the future is in accordance with a wise and humane public policy.

STATEMENT TO ACCOMPANY MEMORANDUM FILED BY EDWARD A. THURSTON, FALL RIVER, MASS., IN RE H. R. 12884, BILL RELATING TO NEUTRAL AND AMERICAN WOMEN INTERMARRIED WITH ALIENS.

Margaret de Stuers Oberndorff, a married woman, 42 years of age, now living with her father's people in Holland.

Her history is as follows:

Her father, Alphonse Lambert de Stuers, was a citizen of Holland. In 1870, when a young man, he was a member of the Dutch Legation in Washington. While there he met Margaret Laura Carey, of New York City, they became engaged and were married at her father's house in New York City in 1875.

Shortly after the marriage he was transferred to London, where he held the position of first secretary of the Dutch Legation. From there they went to Paris. They had three children, and Margaret de Stuers was born at Versailles, France, in 1878. (The other two children were boys. One died several years ago, and the other is now living in Holland.)

De Stuers was then made Dutch minister to Spain, and he lived in Madrid until 1886. In 1886 he was made Dutch minister to Paris, and he held that position uninterruptedly until his death in 1919, less than a year ago. Occasionally he used to revisit America, as he had many friends here, with whom he kept in constant communication. At the outbreak of the war in 1914 he was at his post in Paris, and remained there, with German airplanes dropping bombs around him, during the entire war. At the time of his death he left practically no property, except his house in Holland.

His daughter, Margaret de Stuers, on January 2, 1904, when the relations between foreign countries were friendly and amicable, was married in Paris to a citizen of Germany, Alfred von Oberndorff. At the time of her marriage she was a subject of Holland, although with strong American affiliations, as she herself by birth was half Dutch and half American, and she had been brought here by her mother and knew and liked her American relatives. They had three children: Marie Theresa, now aged 15 years; Carl Alfons, now aged 13 years; and Elizabeth, now aged 2 years.

At the outbreak of the war she was unable to leave Germany. As soon as possible after the armistice was signed she got out with her three children to Switzerland, thence to Paris, and thence to Holland, where she resides with

her father's people. Her two girls are with her, and her boy is in Holland at a Dutch school.

From her mother's side of the family she and her brother inherited some real estate on the corner of Sixth Avenue and Seventeenth Street, in New York City, of which she owns eight-fifteenths and her brother seven-fifteenths. It is business property, consisting of stores and lofts, and is leased to different tenants. The value of her eight-fifteenths is about $250,000. This property of hers and the rentals have been taken by the Alien Property Custodian. In 1867 her grandmother's brother, a resident of New York, put some property in trust, the trustee to pay the income to himself and his wife, and upon his death to distribute the property among his heirs. He and his wife died in 1917. Margaret de Stuers is one of his heirs, and her share is worth about $240,000. This also has been taken by the Alien Property Custodian. In addition, there was a trust fund of $60,000 held here for her benefit by a relative; this also has been turned over to the Alien Property Custodian.

STATEMENT OF MR. CYRUS SARGEANT, 60 STATE STREET, BOSTON, MASS.

Mr. SARGEANT. Mr. Chairman and gentlemen of the committee, I represent my sister, Mrs. Louise Rittler, who is now in Bohemia, a part of the new Czecho-Slovakian State. She was born in Plymouth, N. H., of American parentage, and her father and mother were born of American parentage. When her father and mother died in 1902, besides some securities, she inherited with me seven-eighteenths of some real estate in New England, through her father, and one-half interest in real estate through her mother, and she also owns the Old Homestead in Plymouth, N. H. In 1907 she was married to Mr. Rittler, at that time an Austria-Hungarian. She resided in Vienna for a while and then resided in Steiermarch, Austria, and then in Pilsen, Bohemia.

She has four boys and she wants to come over here. She wanted to come just before the war began, but she could not. Now she wants to come back here and bring the boys and educate them in our universities. She wanted to come before now, but I advised her not to come because I thought that in the treaty with Austria the rights of citizens of Czechoslovakia would be recognized and the property would be handed back. That is why she is staying over there. I contemplated asking for her property back under the peace treaty as a citizen of Czechoslovakia, and wanted her to wait there to prepare papers, etc. If the peace treaty does not go through and we do not recognize the Czecho-Slovaks as an independent nation she is like any other wife of an Austrian or a German. Her husband was one of the revolting Czecho-Slovaks who, in the latter part of the war, revolted and killed their Austrian officers and fought against Austria and Germany. I know that he has affirmed his Czechslovagia citizenship. I was prepared to put Mrs. Ritter's case before the Alien Property Custodian and ask to have her property freed under the treaty, as the Czechs were exempted from any liability. But now, as the treaty has gone by the board, I do not understand that the Czechoslovakian citizenship helps at all. This bill would help her very much.

I think everything that I could say in support of this bill has been pretty well gone into, and I do not want to take the time of the committee in going over it again. But I would like to refer to one point in regard to the Alien Property Custodian. He says in his

report that "The enemy investments in America divide themselves into two classes. In the first are the private investments of individual German subjects who, attracted by the possibilities in America, invested their funds in a small way in this country in real estate, in mortgages, and in securities, chiefly of industrial and transportation companies. In the second class are the investments which have been made by combined capital in Germany having close affiliations with the great political and financial powers of the empire. These latter investments sought dominance, and frequently secured control of great industrial establishments of the United States. It seemed to me from the beginning that these two classes of property should be treated differently when they came into the possession of the Alien Property Custodian. Speaking in a general way, investments in this first class were friendly. As to them the Alien Property Custodian is constituted a sort of trustee or guardian to see that they are conserved and protected as against the time when the treaty of peace or the act of Congress shall make final disposition of them in kind."

I understand from that that Mr. Palmer, the Alien Property Custodian, thought the friendly investments were to be handed back in kind.

In the history of our country during the Civil War period there are many court decisions against confiscating private property for a nation's war debt. There are two or three cases that stand out especially, particularly the case of Mrs. Alexander's cotton. In those cases Chief Justice Chase and other judges said it was very much against public policy to take private property for the payment of a public debt. Furthermore, in the confiscation acts after the Civil War, of which there were a number, the situation was the same. When our armies were going South, the enemy fled, leaving abandoned property behind and that property was held. It was provided that where affidavits were filed to show that the property was not used to help wage the war the property was handed back to the owners. The last act of Congress in connection with that situation gave back all that property. Referring to the act the court said it was "against modern enlightened thought and practice to take the private property of a defeated enemy's citizens to pay a debt which the defeated enemy owed."

Mr. MONTAGUE. The war was at an end at that time when those decisions were rendered.

Mr. SARGEANT. Yes; I think that must be so.

Mr. BARKLEY. Your brother-in-law who married your sister was an Austrian citizen?

Mr. SARGEANT. Yes, sir.

Mr. BARKLEY. He remained an Austrian citizen, technically, at least, and your sister followed him as an Austrian citizen until the Czechoslovakian nation was set up?

Mr. SARGEANT. Yes, sir.

Mr. BARKLEY. He immediately declared his allegiance to the new nation?

Mr. SARGEANT. Yes.

Mr. BARKLEY. That nation has been recognized by a number of governments?

Mr. SARGEANT. It has been recognized by our Government.

Mr. BARKLEY. But there has been no treaty so far as our Government is concerned fixing the status of that nation and fixing the status of its citizens?

Mr. SARGEANT. No.

Mr. BARKLEY. The alien property act does not contemplate the transformation of a man from one citizenship to another by an act of revolution to bring relief?

Mr. SARGEANT. That is the ruling of the Attorney General, that any transfer of citizenship caused by the present war and treaty is not going to take that claimant out of the classification of aliens.

Now, so far as my brother-in-law's property is concerned, which consisted of some real estate, including a farm, they have no income from it at all. They are cutting lumber down and raising animals for exchange; exchanging lumber for sheep or for something else to eat. Since the war I have myself supported my sister; I have sent her all the money she has had to spend. I believe they would have been in want otherwise. I could not use any of her collateral because that is held by the Alien Property Custodian. I have used my own collateral and borrowed money and sent it to her. As far as Mrs. Rittler's voluntary acts count, she did nothing except in 1907 to marry the man she loved and go to his country to live, leaving her property here in my care and trusted this country to preserve it for her. I do not see why she should be placed in the same class as a man who abandons this country and takes up citizenship in another country, and yet by the mere fact of her marriage to a citizen of Austria you gentlemen place her in the same position I would be in if I were to say I would have nothing more to do with this country and that I was going to become a German citizen.

Mr. MONTAGUE. We did not do that.

Mr. SARGEANT. I understand that, but that is the situation if you do not report this bill.

Mr. MONTAGUE. We did not bring about that status. That has been the time-age law of nations and the United States simply recognized it in the act.

Mr. SARGEANT. There is this difference, as I understand it. If I should go to Germany and take out naturalization papers and then want to come back to this country, I could not get back as easy as she could. If her marital relation ceases and she writes to an American consul and says she was an American citizen before her marriage and wants to come back here, she can get back. But I could not do that. I could not get back in the country without taking out other papers.

Mr. MONTAGUE. That was not what was in my mind. The thought in my mind was this: The implication of your remark was that this statute, this trading-with-the-enemy act——

Mr. SARGEANT (interposing). I will apologize for that. I did not mean quite that.

Mr. MONTAGUE. What I wish to call your attention to is this, that the general law of nations practically fixed that, and it is simply recognized by our statute.

Mr. JONES. You stated that she desires to return here with her four boys. Is that temporary?

Mr. SARGEANT. No; she is sick of that country.

Mr. JONES. Is her husband coming back with her?

Mr. SARGEANT. I do not know. I believe he is or was ill and in a sanitarium.

Mr. JONES. You do not mean she will come to this country and leave her husband over there?

Mr. SARGEANT. She has got to do it, with or without him, or starve to death.

Mr. JONES. I wondered what her idea was in coming to this country?

Mr. SARGEANT. I can say unauthoritatively that she wants to come back here and live in the old homestead and bring her boys up as American boys are brought up.

I would like to have the statement which I have compiled placed in the record.

The CHAIRMAN. Very well.

(The statement submitted by Mr. Sargeant is as follows:)

ARGUMENT IN FAVOR OF HOUSE BILL 12884, ENTITLED "A BILL RELATING TO NEUTRAL AND AMERICAN WOMEN INTERMARRIED WITH ALIENS.

House bill 12884 is entitled "A bill relating to neutral and American women intermarried with aliens." It is designed to relieve a very limited part of alien enemies, who are alien enemies only in the most technical sense from the operation of those provisions of the trading with the enemy act approved October 6, 1917, which authorizes the President, the Alien Property Custodian, or any other officer or agent of the United States to take or hold possession of the property of alien enemies.

Clause 1 of House bill 12884 provides as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That no woman, prior to her marriage the subject of a country which remained neutral in the recent war commonly known as the World War, or born in the United States of American parents, who, prior to July 28, 1914, intermarried with a subject of the German Empire or of the Empire of Austria-Hungary, shall be determined or held to be an alien enemy as a result of or by reason of the war between the United States and the German Empire or between the United States and the Empire of Austria-Hungary and the act of Congress known as the trading with the enemy act, approved October 6, 1917, and the amendments thereto and the proclamations and the Executive orders issued in pursuance thereof."

Clause 2 provides in substance that except as provided by section 5 of this act no provision in this act of October 6, 1917, shall authorize the President or the Alien Property Custodian, or any other department, officer, or agent of the United States to take possession of or continue to hold custody or possession of any property of such married women, unless such property was derived from some citizen of the German Empire or of the Austrian Empire or their allies. Clauses 3 and 4 provide machinery by which such married women may reclaim their property. Clause 5 provides that until such claim is made and duly established such property shall be held under the provisions of the act of October 6, 1917, except that it shall not be sold or otherwise disposed of. Clause 5 further provides that in case any claimant shall die either before or after the claim is presented, the claim shall descend to her children by right of representation thus barring any possible claim by the husband. Clauses 6 and 7 provide machinery for turning over the property claimed when the claim has been duly established.

To determine whether Congress should turn a deaf ear to these daughters of our own and neutral countries and should, in effect, declare that their confidence in our justice, generosity, and chivalry was a mistake, it becomes necessary to consider three questions:

1. What is the origin and purpose of the right in time of war to seize and possibly to confiscate the property of alien enemies which is in this country.

2. What was the purpose of the act of October 6, 1917, with respect to such property?

3. Is this bill in any way inconsistent with the purposes which the act of October 6, 1917, was intended to accomplish?

I. THE ORIGIN AND PURPOSE OF THE POWER TO SEIZE AND POSSIBLY CONFISCATE ENEMY PROPERTY IN TIME OF WAR.

The right to confiscate property of enemy subjects in time of war is as old as war itself. It rests in the last analysis on power. The savage spares neither the right of the property nor the life of his enemies. Even the Old Testament records the history of wars waged almost without mercy. Joshua in supposed obedience to divine command smote his enemies with the sword and destroyed their property as a thing accursed. But even before the time of Christ the human impulse toward mercy slowly asserted itself. Nebuchadnezzar plundered and destroyed Jerusalem, but, generally speaking, spared the lives of the conquered, whom he deported to Babylon. Alexander the Great respected the lives and to a considerable extent the property of the conquered Persians. When Rome conquered Italy she consolidated her power by the humane terms which she accorded. It is true that her deadly enemy, Carthage, was ultimately destroyed without mercy. In other wars Rome often permitted plunder (as in the case of Greece) immediately after victory. Yet the Roman policy, especially in the time of the Empire, tended more and more toward political subjection without general confiscation.

The barbarian invasions, which finally overthrew the Roman Empire, marked a setback of this more humane policy. The vandals have passed into a byword because of their wanton destruction, both of life and property. Attila and his huns set a precedent of savage warfare. Yet the humane tendency reasserted itself anew. In the middle ages a captured enemy was usually spared and admitted to ransom. In early days systematic pillage gradually fell into disrepute, though the custom of private plunder was slower to yield. In this respect different nations advanced with varying degrees of rapidity. The wars of conquest waged by Spain in Europe and in the New World were consistently rapacious and cruel. The horrors of the Thirty Years' War in Germany blot one of the darkest pages of history, yet the long wars between England and France were by no means marked by ferocity even when tried by modern standards. The same is true of the wars waged by Louis XIV; while the Napoleonic wars may fairly be said (with occasional exceptions) to have been fought according to the modern laws of war. More and more civilized nations (this term does not, of course, include the present Germany) have advanced to the conception that even in war noncombatant private property on land is to be spared so far as national exigency and public policy will permit.

To the everlasting glory of the United States no nation has, I think, taken a more advanced and humane position than this country. It is true that the war powers conferred by the Constitution authorize the confiscation of enemy property within our borders in time of war.

Brown *v.* United States, 8 Cranch, 110.

Miller *v.* United States, 11 Wall., 268.

But a mere declaration of war does not ipso facto subject such property to confiscation by the fiat of the Executive; it merely authorizes Congress to provide for such confiscation by statute. Thus in Brown *v.* United States, 8 Cranch, 110, the question was whether a declaration of war authorized a proceeding to seize and forfeit enemy property on land in the absence of any statute authorizing such confiscation. The Supreme Court held that it did not, saying by Chief Justice Marshall, at page 129: "It appears to the court that the power of confiscating enemy property is in the legislature * * *. It is therefore a fundamental principle laid down by our Constitution that even in time of war enemy property within our borders is not to be forfeited, save by some statute duly enacted by Congress. Yet even the undoubted power of Congress in time of war to provide for the confiscation of enemy property by statute has generally been further limited by reasons of policy and the dictates of humanity. Even conquest has been held not to work confiscation of the property of the conquered. As was said by Chief Justice Marshall, in United States *v.* Percheman (7 Pet. 71, 86):

"It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and to assume dominion over the country. The modern usage of nations, which has become law would be violated; that sense of justice and right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled."

The American policy has been to spare private property which is not of military value to the enemy, unless some military or political necessity specially requires its seizure as a war measure. For example, debts due from our own citizens to enemy creditors are suspended during the period of the war, but are not confiscated. Thus, in Brown *v.* United States, 8 Branch, 110, Chief Justice Marshall said, at page 123:

"The universal practice of forbearing to seize and confiscate debts and credits, the principle universally received, that the right to them revives on the restoration of peace, would seem to prove that war was not an absolute confiscation of this property, but simply confers the right of confiscation."

So also in Hanger *v.* Abbott, 6 Wall., 531, the court said, by Mr. Justice Clifford, at page 536:

"In former times the right to confiscate debts was admitted as an acknowledged doctrine of the law of nations, and in strictness may still be said to exist, but it may well be considered as a naked and unpolitic right, condemned by the enlightened conscience and judgment of modern times."

The reason for this view is stated by Mr. Justice Clifford at the bottom of the same page (536):

"We suspend the right of the enemy to debts which our traders owe him, but we do not annul the right. We preclude him * * * during war from suing to recover his due, for we do not send treasure abroad for the direct supply of our enemies in their attempt to destroy us, but with the return of peace we return the right and the remedy."

Another exception based on principles of humanity is declared in The Paquete Habana, 175 United States 677, which held that under international law enemy fishing vessels are exempt from capture and condemnation if they are unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish. The exemption, of course, yields to special necessities of war, for, as Mr. Justice Gray said in that case at page 708:

"The exemption, of course, does not apply to coast fishermen or their vessels if employed for a warlike purpose, or in such a way as to give aid or information to the enemy; nor when military or naval operations create a necessity to which all private interests must give way."

In view of the far greater severity of the rules of international law in regard to seizure and condemnation of private property at sea, as compared with seizure and confiscation on land, this case is a very striking example of the humane doctrine that where the hardship to individuals is great and the effect of seizure and confiscation upon the outcome of the war is negligible, enemy private property should not be forfeited simply because it is enemy property, unless it is actually being devoted to a hostile purpose or military or naval operations create some special necessity in the particular case.

This liberal policy was developed and crystallized by the statutes and decisions at the time of the Civil War. These decisions and statutes are of great significance as showing the moderation with which our country exercises the undoubted right of seizure and confiscation of private property on land in time of war. They related to a war fought in our own country between citizens of that country to determine a fundamental constitutional question as to which the arguments were by no means all upon one side. As the temporary hatred which at times arises between brother and brother is often all the deeper because of the love which has previously existed between them, so the temporary passions engendered by civil war are fiercer than the passions born of a war between nations. Those passions have long since passed away. Lincoln and Lee are revered both in the North and the South. In the late World War North and South alike sprang to the defense of the Stars and Stripes and served with equal fidelity and devotion. We are, thank God, a united country. Yet, if in that time of national travail, when our national existence itself was immediately at stake, this Government did not resort to a policy of universal confiscation for purposes of gain, that moderation in the exercise of an undoubted right furnishes a precedent which may well be considered in determining what treatment shall be accorded to the daughters of our own land, who, before the war, was even dreamed of, married subjects of Germany or Austria.

The so-called confiscation acts of August 6, 1861 and July 17, 1862, may be considered together. The act of August 6, 1861, provided in substance that if any person should employ any property in aiding or promoting the insurrection, or should consent to such use, such property should "be lawful subject of prize and capture wherever found." The act of July 17, 1862, in substance declared that all the estate and property of persons in rebellion, who

did not after 60 days' public warning return to their allegiance should be liable to seizure and condemnation by judicial proceedings. But both these acts were passed to aid the successful prosecution of the war and not for purposes of gain. Thus in Miller *v.* United States, 11 Wall. 268, the Supreme Court in holding that both statutes were a constitutional exertion of the war power, said by Mr. Justice Swayne at page 306:

"War existing, the United States were invested with belligerent rights in addition to the sovereign powers previously held. Congress then had full power to provide for the seizure and confiscation of any property which the enemy or adherents of the enemy could use for the purpose of maintaining the war against the Government."

Taking the decisions together, however, it is plain that the primary purpose of the so-called confiscation acts was to further the successful prosecution of the war by deterring voluntary aid to the seceding States.

A series of amnesty and pardon proclamations issued between March, 1864, and September, 1867, relieved large classes of persons who had actually aided in the insurrection from the operation of the act upon taking an oath thereafter to support the Constitution. Finally on December 25, 1868, a full pardon, without exception, unconditionally and without reservation was granted to all who had participated in the rebellion, with restoration of rights of property except as to slaves. No oath was required.

In other words the Government, instead of prosecuting its undoubted rights of confiscation for purposes of gain, released those rights, even as against those who had actually fought against it.

II. THE SCOPE AND PURPOSE OF THE ACT OF OCTOBER 6, 1917.

The act of October 6, 1917, entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes" was adopted as a war measure and is an exertion of the war powers conferred upon Congress by the Constitution. War had been declared on Germany on April 6, 1917. Our experience during the preceding two years had created a firm belief that both Germany and Austria had placed large amounts of property in this country to be used in prosecuting the war in which they were then engaged. Even while we were nominally at peace with those nations official and unofficial agents of both Governments had not hesitated to use every legal and illegal means at their disposal to hinder the production and transmission of goods to France and England. In this connection it is only necessary to refer to the submarine campaign which resulted in such outrages as the sinking of the *Lusitania* and the *Sussex;* the attempt of Robert Scholz to attach infernal machines, designed to explode at sea, to outgoing vessels; the attempt by Werner Horn to destroy the Grand Trunk bridge into Canada; the attempt of Ambassador Dumbar to foment strikes in munition plants; and the Wolf von Igel disclosures. There was no reason to doubt that when we entered the war the injury which would be inflicted upon us would be in direct proportion to their German and Austrian resources available in this country and the opportunity to use them. A primary purpose of the act of October 6, 1917, was to deprive Austria and Germany of these resources and to make these resources available so far as they had military value for our own prosecution of the war.

It is unnecessary to consider the provision of the act of October 6, 1917, in detail. Broadly speaking it authorized the seizure and sequestration of all property in this country directly or indirectly owned by subjects of or residents in any country with which the United States was at war, and of the allies of such country and of territory occupied by the military powers of such country. In other words it authorized the seizure and sequestration of all property in this country directly or indirectly owned by subjects of or residents in Germany, Austria, Turkey, Bulgaria, and even in Luxemburg and such portions of Serbia, Montenegro, Roumania, and even Russia as were occupied by the German or Austrian military forces. The manifest purpose of so broad an enactment was to insure that no enemy property which might be used to injure this country should by any device be left in a situation where it might be so used.

It is, however, significant that the act of October 6, 1917, did not provide for the confiscation of the property which it subjected to seizure. On the contrary section 12, provides in part: "After the end of the war any claim of any enemy or of an ally of an enemy to any money or other property received and

held by the Alien Property Custodian or deposited in the United States Treasury shall be settled as Congress shall direct."

It is evident therefore that Congress considered that the national emergency would be sufficiently met by seizure without confiscation, leaving the ultimate disposition of the property to be later determined as Congress should provide. In this respect there is a close resemblance to the captured and abandoned property act of March 12, 1863, to which reference has already been made.

The act has fully served its primary purpose. The Alien Property Custodian has seized enemy property of German and Austrian ownership which he estimates to be worth $700,000,000. (Report, p. 9.) This property has been placed in 32,296 trusts. Actual valuations already made show a value of over $502,000,000 with some 9,000 cases still to be valued, which as before stated are expected to swell the total to $700,000,000. In regard to this seizure the Alien Property Custodian says on page 13 of his report:

"The legislative intent was plainly that all enemy property, concealed as well as disclosed, should be placed entirely beyond the control or influences of its former owners where it can not eventually yield aid and comfort to the enemy, directly or indirectly * * * Property in his (the Alien Property Custodian's) hands is in custodia legis in a large sense and the Government can be relied upon at the conclusion of the war to make adequate provisions for the just disposition nd distribution of all this property."

The Alien Property Custodian makes a most significant division of the property seized into two classes, one friendly and one hostile. Thus he says at pages 13 and 14 of his report:

"The enemy investments in America divide themselves into two classes. In the first are the private investments of individual German subjects who, attracted by the possibilities in America, invested their funds in a small way in this country in real estate, in mortgages, and in securities chiefly of industrial and transportation companies. In the second class are the investments which have been made by combined capital in Germany having close affiliations with the great political and financial powers of the Empire. These latter investments sought dominance and frequently secured control of great industrial establishments of the United States. It seemed to me from the beginning that these two classes of property should be treated differently when they came into the possession of the Alien Property Custodian. Speaking in a general way investments in the first class were friendly. As to them the Alien Property Custodian is constituted a sort of trustee or guardian to see that they are conserved and protected as against the time when the treaty of peace or the act of Congress shall make final disposition of them in kind. Investments in the second class were in a sense hostile. They constituted Germany's great industrial army on American soil. In many cases the factories, warehouses, and offices of these enemy-owned concerns were spy centers before America entered the World War, and would have been nests of sedition if the Alien Property Cutodian had not acted promptly in their seizure. As to these no obligation is owed to their private owners to conserve or care for them with a view of ever returning them in kind. The purpose of Germany in maintaining many of them here was such as to justify their complete eradication as German enterprises and their thorough nationalization into an American character."

The trading with the enemy act as originally passed contained but limited powers of sale. (Report, p. 14.) It made the Alien Property Custodian little more than a conservator. But where investigation demonstrated the existence of this great group of hostile industrial investments, fitly called by the Alien Property Custodian "the German industrial army on American soil," Congress passed an amendment giving to the Alien Property Custodian a general power of sale, intended to destroy this army forever (report, p. 15). In the case of hostile investments this power has been exercised to the full. The chemical, metal, magneto, textile, and numerous other industries have been by sale purged of the German character and thoroughly Americanized. In this way resources valuable for the prosecution of the war were rendered available—such as magnetos, cloth, acids, dyes, medicines, and surgical supplies (report, p. 10). The Alien Property Custodian well suggests that the proceeds of these sales constitute a fund which seems ample to pay the claims of our own citizens for losses inflicted by Germany. (Report, p. 18.)

It thus appears that the trading with the enemy act of October 6, 1917, and amendments thereof had in this aspect a fourfold purpose:

First and most important, it provided for the seizure (but not the confiscation) of enemy property in order to prevent any use of it to aid Germany in the prosecution of the war.

Second, by sale of hostile investments it provided for the destruction of the German industrial army on American soil, and thereby ended the German threat to our national economic and industrial prosperity.

Third, it made possible the use of the German industrial army against Germany herself.

III.—THE PROPOSED BILL FOR THE RELIEF OF AMERICAN AND NEUTRAL WOMEN WHO HAVE INTERMARRIED WITH ALIENS IS INCONSISTENT WITH NONE OF THESE PURPOSES OF THE ACT OF OCTOBER, 1917.

Your petitioners certainly hold no brief for the German industrial army. On the contrary, they rejoice in its destruction. They do not urge that any part of the proceeds of these hostile investments should be repaid to Germany or German citizens. On the contrary, those proceeds should be used for the relief of our own citizens from losses caused by Germany. The Alien Property Custodian apparently contemplates that German private investments may be restored. He has apparently withheld them from sale, in order to keep this possibility open.

Your petitioners, however, believe and urge that justice, generosity, and chivalry, as well as the humane practice of this country in former wars, require that a small class of property should be restored intact to its former owners, even though they are technically regarded as alien enemies.

The consequences of the rule that an American woman loses her citizenship by marriage with a foreigner should not be pressed beyond the reason of the rule itself. It is quite another thing to press the rule to the extent that if her husband becomes an alien enemy her property should be forfeited. Doubtless her property is subject to seizure. In time of war we necessarily seize first and inquire afterwards as to the propriety of confiscation. But if the private property of alien enemies should not be forfeited save in the most special circumstances, she is entitled to peculiar consideration.

But this bill does not protect even all American women. It is restricted to those who married Germans or Austrians prior to July 28, 1914. At that date this country was not at war. We did not come in until April 6, 1917, nearly three years later. Even Belgium was not invaded until August 4, 1914. It was that act which stamped once and for all the character of the war which Germany began. She who married a German or an Austrian on the eve of the struggle or after it began is left to bear the full consequences of her choice. Only she who married an Austrian or a German while those countries were ranked as civilized nations is protected by this bill.

Even a member of the very limited class who may claim the protection of this bill is not protected as to all her property. It does not affect any property which she received from her husband or from any citizen of Austria or of Germany or their allies. With few exceptions it will cover only property which she received or inherited from her American parents—property doubtless made in this country and which her affection and trust in our justice and generosity induced her to leave in this country. If the public opinion of civilized nations usually protects the friendly private investments even of alien enemies, how much more should we accord mercy—nay, justice—to the American property of American women who are only alien enemies in a technical sense.

It appears from the report of the Alien Property Custodian (p. 8) that the property of Turks and Bulgarians has not even been seized save in a few isolated cases. Surely it can not be the intention of Congress that the property of American origin belonging to American women should receive harsher treatment than the property of the Bulgarian and the Turk, simply because she married a German or an Austrian in time of profound peace and then relied upon our chivalry and honor.

Finally it can not be used that to accord such justice would in any way defeat the purposes of the trading with the enemy act of October 6, 1917. This property was in no sense a unit in the German industrial army. It was in no sense a hostile investment. It has not been used for enemy purposes. It is still awaiting the action of Congress. The usage of civilized nations, our own previous war policy, and reasons of wise public policy all require that it be restored. Friendly investments in American securities should be regarded the world over as safe as the traditional investment in the Bank of England. If we protect these investments now it will repay us a thousand times over in the years ahead when we seek foreign markets to sell our securities during times of peace. And on the contrary, for us now to create a precedent of not returning

these friendly investments will not only injure the future business of our own citizens, but also may create a precedent which will be used by the Governments of other countries against our own citizens, should in the future we have a war with any nation with whom our citizens have had financial dealings. On all grounds this bill ought to receive a favorable report from this committee and ought to pass.

STATEMENT OF MR. ERNEST L. FRISBEE, BUFFALO, N. Y.

The CHAIRMAN. Please give your name and address for the record.

Mr. FRISBEE. Ernest L. Frisbee, Buffalo, N. Y. Mr. Chairman, I did not come here prepared to make any formal statement. However, there have been so many valuable features brought out here this morning, with some duplication, that I think perhaps I might add a little by reference to a new phase, or a new viewpoint, and I think one not to-day mentioned, concerning the subject matter (which has naturally been largely special cases). I think that if 100 men were to speak on 100 special cases you would have 100 different cases presented to you, each, perhaps, requiring separate treatment, or bills, whereas the phase I refer to, I believe, applies to all; and in the end you will agree with me it should be adopted.

I represent a woman by the name of Clara Schlubeck, who, like her mother before her, was born in the State of Wisconsin, and was of the Schandein family, with whom, I presume, the chairman of this committee is familiar.

The CHAIRMAN. Yes; they live in Milwaukee.

Mr. FRISBEE. Yes; and I suppose the chairman also knows a good many of the things that occurred in connection with that prominent family. I was the attorney for the mother, and after her death I took part in sustaining the mother's will, in which the daughter, my present client, was individually interested. As a result of that litigation she received in the settlement the bonds of a Wisconsin corporation which I am about to mention. The bonds were registered under her name. Later, after a long period of sorrow and domestic unhappiness, and after she had secured a divorce from her first husband under the law of Wisconsin, she went to Germany, and later she married there, 13 years ago, a German portrait artist by the name of Schlubeck, and became technically an alien enemy when our war began. Mrs. Schlubeck has retained here under my advice, some real estate and these corporation bonds, to which I have referred, having no stock in the corporation, but leaving her funds here in the form of bonds and real estate as an investment. She did that, first, because I advised her that it was the safest country in the world in which to leave her property, no matter where she might have her residence, and, second, because she was an American born woman and these bonds and real estate were connected with the institution founded and built up as a life work by her father and mother. As I have said, her mother, like herself, was a native-born citizen of the State of Wisconsin. I based my advice on what I believed and still believe and think nearly all American lawyers believe, that under our American conception of international law, private property was sacro sanct, and whatever the eventuality the honor of our Government and citizens and institutions could be depended upon to sustain all its traditions. Such

a thought with reference to a war with Germany, of course, was not present, but the principle remains.

Under the law the Alien Property Custodian, on the 29th of January last, seized her bonds, having a par value of $1,059,000, or seized the debt represented by the bonds, and they, or the debt, were later sold. The proceeds of the sale and the income from the real estate are now in the hands of the Treasurer of the United States, and she is now, and since the war, has been without a single cent of income from this country out of this bequest from her mother. And in Germany she is surrounded by such a condition of affairs (which I recently took a trip to Germany to investigate) that she can not give up and leave that country without forfeiting one-half of what she possesses there.

This woman is in a little different situation from most of those who have been mentioned here this morning. There is no need of my telling the chairman of this committee about the charities, a similarity to those mentioned, and the good acts of herself and her mother in Wisconsin; that information is more or less public property.

But here is an American woman, an American-born woman, who is between the upper and lower millstones. Her own country has seized her holdings of bonds and income which were not unfriendly holdings or income in the sense that it was or is dangerous for her to hold them. She can get nothing from that property in any way, shape, or form; and under the operation of this law as it now stands she has no hope of ever getting it, unless Congress gives relief. And what remnant she has over there, locked up in her home, is practically useless the minute she leaves that country.

It seems to me that one or two of the distinguished gentlemen who have preceded me here to-day have given echo to something that I, as an American citizen, feel is very broadly set out—perhaps between the lines, but at the same time thoroughly set out—in this bill, which is known as the Winslow bill. And from my conversations with distinguished men, both in Europe and in this country, it seems to me that there is a matter here of great public policy involved which we have not yet touched upon.

Our people, our great interests, and, I think, even our Government itself, have been favoring and fostering the going out into all the world by American interests and American capital. We have an enormous corporation which has been formed particularly for that purpose, of going everywhere on the face of the earth where they need reconstruction or advancement and expansion, with all kinds of American methods, building up the countries that are far behind—even going to the uncivilized countries. We have and will continue to encourage and urge our people into that sort of investments.

Now, the momentous question confronts us of establishing a precedent which makes everything that I said to this woman false, or at least, bad advice, when I urged her to leave her investments here in this her native country and let them work with our American institutions, handled by American men, because she finds now, that after all, our Government has forced her to lose her principal and income because 13 years ago, she married the man of her choice, after

having a very bitter experience here; so much so, that the wife, or the widow, or the daughter of any man in this room would, I feel sure, have fled to Germany, or anywhere else in the world, rather than live among the sourroundings which caused her so much bitterness and finally I believe caused her mother's death.

If we make this precedent permanent, any foreign country at war with us, or in some way affected by international complications, may on the pretense of conserving and protecting it, seize our citizens' private property and finally sell and possible apply it to the payment of national obligations. In other words, if we establish this precedent now, some foreign country in the future may change its mind after seizure in a similar case and say, we think we will pay off public debts with this private property so seized. And that I am sure would be a bad precedent, even though they should say, "We must keep the American precedent (and property); the sufferers can go to some other, and perhaps bankrupt country for their redress, payable very probably in practically worthless currency." It seems to me that such a precedent once established, other countries will follow it and may use it against us in the future now that we are a world power. They will say, "The United States did the same thing with German property and Austrian property owned by their own native-born women." "The United States treated private and harmless property of these women in that way during the World War." Then will we not with our investments and institutions all over the world, some day wish that we had never created such a precedent? It will be so easy for other countries to so quote and apply it against us. Now, perhaps that thought will at first seem too broad for some in this discussion; but as a mater of great public policy for the future and involving our traditional position and honor in the past, I submit it very respectfully for your consideration when this whole question is gone into and all special cases have been heard from.

It seems to me, moreover, that the broad policy of simple American citizenship prior to the alien marriage, which evidently is the intention in the Winslow bill, is the only one that you will ever get that is broad enough to be equal and just, without passing countless particular bills to apply to particular cases.

We are perfectly willing to submit our situation in such a bill as that. We feel that in the necessary sacrifice and cost of administration which all must endure, if any part of it pinches in the operation of any plan for relief for all American-born women, then as the loyal representative of this woman, we must take our share of the medicine. But on broad and just principles most of this property can and should be saved for the original owner. Any American-born woman should not be penalized for having married a German 13 years before the war. I would be very glad to see this principle recognized in any bill that the committee may pass.

On the general principles as affecting these particular bonds, and property of that sort, we feel that the Winslow bill (as long as the American birth of the woman is made the basis of it) will save this woman from the danger of suddenly falling from the position of a woman of affluence and wealth (which she was using judiciously and charitably) into the position of a woman without sufficient means to support herself. We feel that this bill should give relief;

and we certainly hope that, with such changes or additions as the wisdom of this committee may see fit to make in it, that it will pass, so as to give relief to women who prior to their marriage to the alien enemy (and prior to the war, April 6, 1917) were native-born American citizens. I thank the committee for hearing me.

(A brief filed by Mr. Frisbee is as follows:)

BRIEF IN SUPPORT OF ORAL STATEMENT OF MR. E. L. FRISBEE, AT HEARING OF MARCH 23, 1920, IN BEHALF OF CLAIRE S. SCHLUBECK, FILED BY LEAVE OF COMMITTEE.

In approaching the questions to be settled by the bill proposed, while the world is still shaking to its very foundations, it seems that not only for the present exigencies, but, at this most critical time in our history, for the future of our country, it is the part of statesmanship to square the proposed legislation with the great basic laws and facts which, like the law of gravity, will remain regardless of any human attempt at controversion.

This bill has to do with American women who have married certain aliens.

We respectfully submit the well-known natural law, that the female of all the higher orders of living creatures (man or beast) by nature exercises the innate right to choose and select her mate. As the human race progresses from savagery to highest civilization, it proceeds along this ascending line from almost the zero point to the complete recognition of this rule in the highest plane.

All laws and customs to the contrary fade away with advancing sun of enlightenment.

Therefore it is now the fundamental right legally established that an unmarried woman in any part of the civilized world may marry an eligible man of her choice, though a citizen of any other country, without legally suffering from ignorant prejudice or being penalized for the act itself, even though it turn out unfortunate or injudicious.

The very soundness of our own civilization is generally ascribed to the blending together by marriage of those coming here from all the races of the earth.

This Nation has been distinguished especially by one great characteristic; viz, an almost sacred care and protection of all female members of the family unit physically, morally, financially. All the marriages in the world between our sisters, daughters, or mothers with other nationals, can not change these American ideals and affections or the great laws with which they conform. No eventuality unforseen at the time of the marriage can be used to penalize them therefor without being a moral shock to all fair-minded citizens.

We have orally called general attention to the question of taking private property of any of these women to pay enemy debts.

We further submit, for such consideration as it may invite, certain principles of the law of nations as are to be found in the works of leading authorities on the subject, and as are set forth, in some instances, in specific cases. The purpose of our memorandum is in no way directed against the complete justification of the trading-with the enemy act, which was so invaluable during the World War. Our purpose is rather to direct the attention of the committee to the law which existed and was recognized by all nations prior to the World War, and which may again be recognized by us when our technical state of war becomes an actual state of peace.

The enemy State and not the private enemy individuals should be made to pay war claims.

Modern International Law does not sanction the confiscation of private enemy property to pay debts of the enemy State.

"The War of the Revolution has been sometimes appealed to as countenancing the sequestration of debts and the confiscation of property. This was denied by Alexander Hamilton in his argument on the tenth article of the British treaty of 1794. He said (in reply to those who represented the confiscation or sequestration of debts as our best means of retaliation and coercion): 'So degrading an idea will be rejected with disdain by every man who feels a true and well-informed national pride; by every man who recollects and glories that in a state of still greater immaturity we achieved independence without the aid of this dishonorable expedient.'" (Hamilton's Works, Vol. VIII. p. 329.)

Article 46 of The Hague Regulations expressly enacts that "private property may not be confiscated." Confiscation is distinguished from the temporary use of private land and buildings for all kinds of purposes demanded by the

necessities of war. As great an authority on international law as Oppenheim states:

"In former times all private and public enemy property, immovable or movable, on each other's territory could be confiscated by the belligerents at the outbreak of war, as could also enemy debts, and the treaties concluded between many States with regard to the withdrawal of each other's subjects at the outbreak of the war stipulated likewise the unrestrained withdrawal of the private property of their subjects. Through the influence of such treaties, as well as of municipal laws and decrees enacting the same, an international usage and practice grew up that belligerents should neither confiscate private property nor annul enemy debts on their territory. The last case of confiscation of private property is that of 1793, at the outbreak of the war between France and Great Britain. No case of confiscation occurred during the nineteenth century. There is now a customary rule of international law in existence prohibiting the confiscation of private enemy property and the annulment of enemy debts on the territory of a belligerent. Private enemy property, which may be made use of by the enemy, may be withdrawn. All appliances for the transmission of news may be confiscated, although they are private enemy property, provided they are restored and indemnities paid for them after the conclusion of peace." (Oppenheim on International Law, Vol. II.)

Oppenheim further states:

"That war must support war remains a principle under these (The Hague) regulations also. But they are widely influenced by the demand that the enemy State as such, and not the private enemy individuals, should be made to support the war." (Vol. II, p. 184.)

The authorities are practically in accord that while under international law contributions and requisitions are permissible, confiscation is not.

Article X of the treaty between the United States and Great Britain, 1795, provided that in no case should "debts due from individuals of the one nation to individuals of the other, nor shares, nor moneys which they may have in the public funds, or in the public or private banks, be sequestered." (Hall on International Law, note, p. 433.)

"Sequestration and confiscation have been expressly forbidden by a convention between the United States and France in 1800 (De Martens, Rec. VII, 484) and by a number of treaties during the last century, to which, with scarcely an exception, one of the parties is a South American State. It might be argued not unfairly that if treaties like these do not exist between European countries and between them and the United States it is because there has been for a long time little fear that the right guarded against would be exercised by well-regulated States." (Note to Hall, International Law, p. 435.)

Alexander Hamilton, in defense of Jay's treaty (Works VII, letters 18, 19, 20), argues that the public faith is pledged to the foreigner who leaves his property or debt in this country.

In our treaty with Great Britain, 1794, article 10, "confiscation" is pronounced as "unjust and impolitic."

Such an eminent authority as Kent considers the impolicy of confiscation to be so clear and its bad faith so palpable as to remove it from the permitted acts of war.

"During the Civil War in the United States the Congress of the Confederacy confiscated all property movable or unmovable * * * held by or for an alien enemy. Earl Russell remonstrated against this proceeding as discountenanced, if not disallowed, by the modern law of nations." (Dana's Notes to Wheaton on International Law, p. 393.)

"Kent (165) states the law of nations to be, at the time of his writing, that it rests in the discretion of the legislative authority of a nation to confiscate private debts or not, at its discretion; but, as the exercise of the right is contrary to universal practice, it may 'be considered as a wicked and impolitic right, condemned by the enlightened conscience of modern times.'" (Dana's Notes on Wheaton, p. 392.)

In the light of our statements made orally at the hearing of this committee on March 23 last, supported by the necessarily brief citations herein contained, we have full faith that this committee will report a bill in conformance with tradition, precedent, and justice. But the greatest argument and perhaps the only one convincing to a small number of those who may appear in opposition to such a bill, has remained untouched in the space allowed, and can only be inadequately alluded to, to wit, the incalculable value in the years, even centuries, to come of our national reputation for saving harmless and returning to

its American-born women owners property (especially that classified as "not unfriendly") left here in faith and trust when they gave up domicile and followed their natural instincts matrimonially. The value of a world-wide trust and confidence in us and our institutions as a safe depository for the surplus and active funds of all the peoples of the world and the commercial relations established thereby is demonstrable by only a thought as being so stupendous that all questions as to many details which may first arise in minds not awakened to the comparison, that practically all questions which have seemed to present subjects for argument sink into insignificance. Our thought in closing is, Why not act as the great insurance companies successfully do in case of loss, pay promptly all claims of all these women who were natural-born American citizens before the marriage (be they rich or poor), without cavil and without laying our Nation open to the accusation of hesitating about its relation as trustee for its own daughters, even though the temptation to consider and differentiate between thousands of specific cases may for various reasons be presented.

Respectfully submitted.

ERNEST L. FRISBEE,
Counsel, 925 Fidelity Building, Buffalo, N. Y.
RUFUS S. DAY,
Associate Counsel, Westory Building, Washington, D. C.

The CHAIRMAN. Is there a representative of the office of the Alien Property Custodian present?

Mr. S. M. STELLWAGEN. Mr. Chairman, Mr. Boggs, the general counsel of the Alien Property Custodian, merely asked me to come here this morning and to report what happened at this hearing, and he was of the impression that an extension of time would be granted to Mr. Garvan, the Alien Property Custodian, to appear before the committee.

The CHAIRMAN. I gave him notice that we would have hearings on March 23—that is to-day. But we can not conclude this matter now because the Alien Property Custodian should be heard before it is concluded. What day would be convenient for him?

Mr. STELLWAGEN. I would have no authority to speak for him in that matter, Mr. Chairman.

The CHAIRMAN. Then I will have to communicate with him.

Mr. THURSTON. Mr. Chairman, there is a young man here from New York, whose mother has some property which is in a situation, I think, that is typical of that of a great many of the people in Germany; and if this committee will give him just a few minutes, to permit him to put his case on the record, I think it will be worth while.

The CHAIRMAN. We can hear him for a few minutes.

Please give your full name and your address.

STATEMENT OF MR. RALPH M. LANE, PARK AVENUE HOTEL, NEW YORK CITY.

Mr. LANE. My name is Ralph M. Lane. I am now a resident of New York City.

I am appearing in behalf of my mother, Mrs. Julia Lane Wackwitz, an American-born woman now married to a German citizen. My mother has been married for about 16 years to her present husband and has lived more or less continuously in Germany ever since her second marriage. She owns certain property which has been held for her through the St. Louis Union Trust Co. of St. Louis, Mo.

At the time of the outbreak of the war this property was delivered to the Alien Property Custodian by the St. Louis Union Trust Co., and has been held by him ever since.

I personally have not been in communication with my mother for about five years, until last December, when I had my first letter from her. In that letter, my mother states the tremendous hardships which she has had to undergo owing to the fact that she has been living in Germany. She has practically been reduced to a penniless state, and has asked me to petition for her that the income which she had been receiving from the properties owned by her should be paid to her again. I feel from the way she has written me that hers is a very urgent case, and that she needs financial support very badly.

I personally, since I have reestablished communication with her, have been able to do a little for her myself. I have not been able to to do very much for her, owing to the fact that I served in the United States Army, and have just recently gotten back into business.

I wanted to bring this case to your particular attention, as I thought it was a very worthy one; and I hope that you gentlemen will consider it as such.

Mr. JONES. What is the character of this property?

Mr. LANE. The greater part of it is real estate in and around St. Louis, Mo.; there are also certain shares of industrial stock.

Mr. JONES. How did she acquire title to it?

Mr. LANE. My mother received this property through her mother, and through my father.

Mr. JONES. They were Americans, were they?

Mr. LANE. Yes, sir.

The CHAIRMAN. This will conclude the hearing for this morning.

(Thereupon, at 12.30 p. m., the committee adjourned.)

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, April 2, 1920.

The committee met at 10.30 o'clock a. m., Hon. John J. Esch (chairman), presiding.

The CHAIRMAN. The committee will come to order.

We have for further consideration this morning the bill introduced by Congressman Butler, H. R. 12651, and the bill introduced by Congressman Winslow, H. R. 12884, these being bills relating to married women, intermarried with aliens, and effecting the alien property custodian act.

Mr. Garvan is present and the committe will be glad to hear him this morning.

STATEMENT OF FRANCIS P. GARVAN, ALIEN PROPERTY CUSTODIAN.

Mr. GARVAN. Mr. Chairman, I personally, or as alien property custodian, have no views to present to you with reference to the disposition of these bills. I am in the position of being a trustee without any interest in what becomes of the fund, and whatever is your purpose or intention, I am in perfect accord with it. If there are

any specific facts about specific cases, or if you intend to report the bill, why then I would like to make some suggestions as to details which would make it much more easily administered, but I am in hearty accord with any policy which your committee or which the Congress adopts.

The CHAIRMAN. Have you suggestions to make to either of these bills, in order to make them more workable?

Mr. GARVAN. I have.

The CHAIRMAN. As to one or both?

Mr. GARVAN. As to both. And I can either have those placed in the record or I will read them.

The CHAIRMAN. You might read them and we will follow you.

Mr. GARVAN. The main one is to have the bill conform to section 9 of the present act. Under the present act nonenemies are able to reclaim their property under section 9. That has built up a procedure and rulings; forms have been decided upon and tested by a long series of claims. The expense to the Government would be much less and it would be much simpler to administer, with much less confusion to the people making the claims, if this act just extended the number of persons who could claim under the present section 9. Then it would allow them to be considered just as United States citizens returning to this country now are considered; the same forms would be adopted and the same rulings as to proofs, etc., would become applicable. Under the present act it would require the building up of a new system, new precedents, new forms, and new decisions. So that if you do decide to return this property I think that just enlarging the definition of the people who can claim under section 9 would much more easily and simply accomplish your purpose.

The CHAIRMAN. Are your suggestions based upon that plan?

Mr. GARVAN. Yes, they are.

Mr. JONES. You would just amend section 9, then?

Mr. GARVAN. Yes; just amend section 9.

In reference to House Bill 12651, I would suggest in section 1, line 9, the phrase "alien enemy" here used might be well changed to read "enemy or ally of enemy as defined in the trading with the enemy act." This phrase would have a definite, unambiguous meaning because of the definition of those terms under the trading with the enemy act, which phrase "alien enemy" would not possess. Such a change would also render unnecessary the succeeding phrase "as a result of the war," etc.

Section 2, lines 4 to 9, inclusive: This phraseology beginning with the words "shall be held" might be construed as a legislative declaration that the holding of such property even prior to this enactment of legislation, was unlawful. Further, it would be necessary for the Custodian or Treasurer of the United States, as the case may be, to continue, in any event, to hold the property until application for its return has been filed and passed upon.

Section 2, line 20: It is to be noted that the proposed restoration of property is limited solely to the married woman or her authorized attorney. Your committee may also desire to consider the advisability of providing that if the woman in question be deceased, the property may be restored to any of her heirs or distributees,

legatees or devisees, who are not enemies under the trading with the enemy act, in such proportions as they may be entitled to receive.

Section 3, line 7: The language "upon the filing of any such application" would appear to restrict the right of the Presidential appointee to consider the question on its merits and determine the truth of the allegations of the application.

Section 4, lines 20, 21, and 22: Section 9 of the trading with the enemy act as amended provides with reference to such litigation, that the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant. Some such provision would seem to be desirable here, as the procedure in its present form is so vague as to be almost indeterminable.

Then in reference to House bill 12884, section 1, line 3, if the bill is to be extended to women who were subjects of countries which remained neutral during the World War, I suggest that this phrasing might be extended as well to those who were subjects of countries which were associated with the United States in the conduct of said war.

Section 1, line 6: Persons born in the United States are citizens thereof, and the phrase "of American parents" appears to be a limitation you might wish to reconsider.

The CHAIRMAN. That is in what section?

Mr. GARVAN. Section 1, line 6.

The CHAIRMAN. Referring to American parents?

Mr. GARVAN. Yes, sir.

Mr. MORGAN. May I ask, Mr. Garvan, are you commenting upon the bill I introduced?

The CHAIRMAN. No; he is commenting upon the Winslow bill now.

Mr. MORGAN. Yes; I see.

Mr. GARVAN. Section 1, line 6. As the United States did not enter the war until April, 1917, the date given, "July 28, 1914," might be advanced to that time.

The CHAIRMAN. The Butler bill only went to April 6, 1917, but the Winslow bill goes to the beginning of the war itself. In your opinion, which would be the better date?

Mr. GARVAN. The date that we went into the war.

Section 1, line 8: The words "alien enemy" would be subject to the same comment as given with reference to the same wording found in H. R. 12651. Further, the words "shall be determined or held to be" might be interpreted to be in conflict with the past acts of the custodian, which were expressly within his province under section 7 (c) of the trading-with-the-enemy act.

Section 2. This section, I believe, might be eliminated, as it will be necessary for the custodian or Treasurer of the United States, as the case may be, to hold the property concerned, in any event, until application for the return thereof has been made and favorably passed upon. This feature seems amply covered by section 5.

The CHAIRMAN. Section 5 of the Alien Property Custodian act or of this?

Mr. GARVAN. Of this act.

The CHAIRMAN. Of the bill?

Mr. GARVAN. Yes; of the bill.

Sections 3 and 4: These sections might well be reconsidered with reference to the present wording of section 9 of the present act, and their wording and intent clarified along the lines of that section.

Section 5, lines 12 to 25: The custodian should be authorized to hold the property claimed (except that it should not be sold or otherwise disposed of) until the claim in finally favorably passed upon, or, if the suit has been filed, until judgment has been entered. The present wording would imply that the custodian has to hold the property until it was ordered conveyed to the claimant, and makes no provision for the release of the effect of this section if the claim was disallowed, or suit for same otherwise terminated.

Section 5, lines 25–6: It would appear from the wording in these lines, that the children of the decedent may make claim for the property whether they be enemy subjects or not. It may be that a different provision should be inserted with regard to them.

The CHAIRMAN. Have you suggested the other provision?

Mr. GARVAN. Well, I did not know whether you wished to have the children of American citizens, where they have become German citizens, come within the purview of your bill.

Mr. JONES. Let me see if I understand your position:

In the first place, you think section 9 might be amended so as to broaden the definition of persons affected under it to answer the whole purpose?

Mr. GARVAN. Yes.

Mr. JONES. If, however, the committee is of the opinion that one of these bills or a similar bill should be passed, the suggestion that you have made could be embodied in the bill?

Mr. GARVAN. It would make it simpler and easier for us.

Mr. JONES. Then there are two alternatives: Amend section 9 or modify these bills in harmony with your suggestion?

Mr. GARVAN. Yes, sir.

Mr. JONES. That is your thought?

Mr. GARVAN. Yes, sir.

The CHAIRMAN. Have you a draft of the amendment to section 9?

Mr. GARVAN. Yes; I have embodied that in a letter, Mr. Chairman, and I thought I brought it along with me, but I find I did not. I will give it to you during the day, and I will have Mr. Stellwagen stay here, whom I have specially assigned for some months to put himself in a position to assist congressional committees on any subject, and he will work with you and do anything you want him to do to assist you.

Mr. JONES. Can we get copies of these suggestions?

The CHAIRMAN. You can leave a copy with the stenographer, so it can be incorporated in the hearings.

(The paper referred to follows:)

IN RE H. R. 12651.

Section 1, line 9: The phrase "alien enemy" here used might be well changed to read "enemy or ally of enemy as defined in the trading-with-the-enemy act." This phrase would have a definite unambigous meaning because of the definition of those terms under the trading-with-the-enemy act, which the phrase "alien enemy" would not possess. Such a change would also render unnecessary the succeeding phrase "as a result of the war," etc.

Section 2, lines 4 to 9, inclusive: This phraseology beginning with the words "shall be held" might be construed as a legislative declaration that the holding

of such property even prior to this enactment of legislation, was unlawful. Further, it would be necessary for the custodian or Treasurer of the United States, as the case may be, to continue, in any event, to hold the property until application for its return had been filed and passed upon.

Section 2, line 20: It is to be noted that the proposed restoration of property is limited solely to the married woman or her authorized attorney. Your committee may also desire to consider the advisability of providing that if the woman in question be deceased the property may be restored to any of her heirs or distributees, legatees, or devisees who are not enemies under the trading-with-the-enemy act, in such proportions as they may be entitled to receive.

Section 3, line 7: The language "upon the filing of any such application" would appear to restrict the right of the presidential appointee to consider the question on its merits and determine the truth of the allegations of the application.

Section 4, lines 20, 21, and 22: Section 9 of the trading-with-the-enemy act, as amended, provides with reference to such litigation, that the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant. Some such provision would seem to be desirable here, as the procedure in its present form is so vague as to be almost indeterminable.

There is no provision for the discharge of the custodian in this bill.

IN RE H. R. 12884.

Section 1, line 3: If the bill is to be extended to women who were subjects of countries which remained neutral during the World War, this phrasing might be extended as well to those who were subjects of countries which were associated with the United States in the conduct of said war.

Section 1, line 6: Persons born in the United States are citizens thereof, and the phrase "of American parents" appears to be a limitation you might wish to reconsider.

Section 1, line 6: As the United States did not enter the war until April, 1917, the date given, "July 28, 1914" might be advanced to that time.

Section 1, line 8: The words "alien enemy" would be subject to the same comment as given with reference to the same wording found in H. R. 12651. Further, the words "shall be determined or held to be" might be interpreted to be in conflict with the past acts of the custodian, which were expressly within his province under section 7 (*c*) of the trading-with-the-enemy act.

Section 2: This section might be eliminated, as it will be necessary for the custodian or Treasurer of the United States, as the case may be, hold the property concerned, in any event, until application for the return thereof has been made and favorably passed upon. This feature seems amply covered by section 5.

Sections 3 and 4: These sections might well be reconsidered with reference to the present wording of section 9 of the present act, and their wording and intent clarified along the lines of that section.

Section 5, lines 13 to 25: The custodian should be authorized to hold the property claimed (except that it should not be sold or otherwise disposed of) until the claim is finally favorably passed upon, or, if suit has been filed, until judgment has been entered. The present wording would imply that the custodian had to hold the property until it was ordered conveyed to the claimant, and makes no provision for the release of the effect of this section if the claim was disallowed, or suit for same otherwise terminated.

Section 5, lines 25–26: It would appear from the wording in these lines, that the children of the decedent may make claim for the property whether they be enemy subjects or not. It may be that a different provision should be inserted with regard to them.

Mr. MORGAN. Mr. Chairman, may Mr. Ludlow ask the Alien Property Custodian a question here?

The CHAIRMAN. Yes. Give your name.

Mr. BENJAMIN H. LUDLOW, of Philadelphia. I would like to ask Mr. Garvan, Mr. Chairman, through you, whether of the two alternatives, it would not be better to have one of these bills amended as Mr. Jones suggested might be done, with the amendments he suggests, rather than to take in section 9, because under the proposed resolution, which

may be debated in Congress in the next week or 10 days, or in any future action on the Alien Property Custodian act, changes might be so made in that act as to strike down the act and the efficacy of any action under it, and with it might go section 9; whereas such a bill as was introduced by Congressman Winslow or Congressman Butler, as revised to contain Mr. Garvan's suggestions, would stand on its own feet regardless of what might happen to the Alien Property Custodian act. I simply throw that out as a suggestion and would like to ask Mr. Garvan whether that might be better, in view of the present circumstances.

The CHAIRMAN. The House, I understand, is to consider a resolution, declaring a date of peace with Germany, from to-day.

Mr. JONES. From yesterday.

The CHAIRMAN. The rule is to be brought in to-day. I would like to ask Mr. Garvan what possible effect the adoption of such a resolution, if signed by the President, would have on this situation?

Mr. GARVAN. Well, I do not feel offhand—of course, this is subject to correction when I get back and go over the subject—that it would affect it. I will write to the committee. This property was all taken under the act of Congress, and the act itself specifically refers the disposition of this property to the further action of Congress.

The CHAIRMAN. The act so states.

Mr. GARVAN. The act so states. Of course, it might have an effect—the treaty provides many provisions in reference to this property, and Germany admitted the regularity of the acts of the American Government—it might involve all these properties in tremendous litigation, but I would assume that any resolution that was introduced would possibly do something toward taking care of our relations with Germany. I do not assume that they would just leave the whole question open.

The CHAIRMAN. This affects a comparatively small amount of property in your possession, and the disposition of the balance of the property in your possession would have to await further action of Congress, pursuant to the original act.

Mr. GARVAN. Yes, sir. Of course, it would be quite a large amount.

The CHAIRMAN. Have you any notion as to how much would be affected by either of these bills?

Mr. GARVAN. No, sir; but there are some quite large estates there.

The CHAIRMAN. You can not give an estimate?

Mr. GARVAN. It would be very difficult for me to do so. There are several quite large ones. I know that the Countess Gladys Szechenyi estate alone amounts to a great many millions. She was Miss Vanderbilt, who married Count Laszlo. Then there is Senator Marcus Daly's daughter—ex-Senator. There are a great many of those estates, and they are quite large. I had hoped that I would be able to come before you with the entire subject of the disposition of the entire property, but, as I say, I have no objection to your legislating for more particularly distressing cases at any time. I have prepared the facts in reference to the cases which have been mentioned before you gentlemen, and I am quite willing to give you those facts, and I am quite sure that they have been honestly and sincerely stated by the people representing them. I do not think there is any question of the patriotism of any of those claimants;

that they are dangerous, or enemies to the country, or anything of that kind, but I have the Keppelmanns, Margarette de Steurs Oberndorff, Rittler, Schleubeck, Wackwitz, and Hilprecht cases—I have all the facts which our records show in reference to those properties.

The CHAIRMAN. Could you leave that memorandum with the stenographer, so it can be incorporated as part of your hearing?

Mr. GARVAN. I can leave it, but I do not know whether you will want to insert it in the record or not, because it is making public the private affairs of these people. But I will leave it for the committee's use.

The CHAIRMAN. It will be considered by the committee in executive session. If it has anything of a confidential nature in it, we will not make it public.

Mr. GARVAN. I will submit it to the people representing these people, so if they think anything is misstated there they can correct it. But I have no objection to the specific character of any of these cases.

Mr. MORGAN. Mr. Chairman, may I ask Mr. Garvan a question?

The CHAIRMAN. Yes.

Mr. MORGAN. Have you read the statement made by some of us here as to Mrs. Hilprecht, Mr. Garvan?

Mr. GARVAN. I read the digest of it.

Mr. MORGAN. Well, is it in accordance with the history of the facts?

Mr. GARVAN. I think so.

Mr. MORGAN. I only wanted you to know the facts.

Mr. GARVAN. At any rate, there were no facts developed objectionable to Mrs. Hilprecht's case as an individual. But there are a great many hardships in connection with this property. For instance, we have no power to return property of the people who are now in Alsace-Lorraine, although they have become allies of this country. We have no power to return the property of Poles, who have now become an independent nation, which we recognize as a friendly nation, and we have no power to return the property of individuals in Germany who are American citizens, who are ill and unable to leave the country, and we have no power to return the property of Czecho-Slovaks. So that I am very anxious for legislation and I would like to see it comprehensive. We sent word to the Senate Foreign Relations Committee that we would be glad to place the whole matter before them at any time, and they informed us that they did not think it expedient to take it up until the question of the treaty was out of the way. But, as I say, I have no objection to any relief that could be granted in any line.

The CHAIRMAN. Is it your opinion that as to the larger question that ought to be deferred until the treaty is practically settled?

Mr. GARVAN. Well, it is not my opinion; that was the opinion of the chairman of the Senate committee.

The CHAIRMAN. And do you concur in that opinion?

Mr. GARVAN. I think the whole thing ought to be legislated on together, because there are a great number of claims by American citizens. There comes a question as to what your policy is going to be, as to whether you are going to return any or all of this property, and whether it is to be held as security for the payment of American claims, which I have no jurisdiction of. Of course, I only know that they have been filed with the Secretary of State's office to a very large amount.

The CHAIRMAN. Can that be done until the reparation commission passes upon these various claims and sends in their finding?

Mr. GARVAN. Those will never be passed upon by the reparation commission, Mr. Chairman. Our matters are entirely in your hands, in the hands of Congress. That was very carefully covered in the treaty. In view of the provision in the trading with the enemy act that the disposition of this property was reserved for the further action of Congress, we were very particular in having our representatives at Paris insist that we took no part in any reparation or any idea which was in conflict with the full freedom of Congress to do exactly as they wished with this property, irrespective of anything that our representatives might have wished to do or had in their minds in Paris. So the field is absolutely open for the action of Congress.

Mr. SIMS. I would like to ask a question there. In a case like the one covered by the Butler Hill, the Hilprecht case, that seems to be attended by circumstances that appeal for immediate action. In a former hearing I suggested to the attorney general from Pennsylvania, who was pressing the matter, and Mr. Butler that a case like that, which did not seem to involve the whole general question, and where we expected, of course, to hear from you or the Alien Property Custodian; that where there was no defense against—in other words, where the United States had nothing to set off and admitted all the facts—that a single private bill returning that property to Mrs. Hilprecht, or whatever her present name is, should be passed, and do it immediately, simply as a single claim.

Mr. GARVAN. I have no possible objection to that.

Mr. SIMS. But to hold up such a meritorious claim as that, where, as I understand it, the lady is in Switzerland, and contributions by her people had to be made in this country, that such cases as that should receive the immediate attention. Now, in Congress I know we used to pass war claims, private omnibus bills, without regard to any general policy. Now, I can see that general legislation covering this whole subject ought to be very carefully considered, and that we ought to take plenty of time in both House and Senate to do so. Meanwhile these persons that would undoubtedly be covered by any general legislation are suffering and doing without their property, and I have suggested, thinking that we might reach the merits of specially important pressing cases that could not possibly make a bad precedent for us, that a bill might be presented in the Hilprecht case and reported favorably and let it get through. That was my thought in advocating it, and would that or not be liable to impair or embarrass the general situation or general legislation?

Mr. GARVAN. No; it would not embarrass me. It is all up to you as to how you want to consider it.

Mr. WINSLOW. Does that case stand out alone in your mind as being specially worthy of consideration?

Mr. GARVAN. No, sir; I must say, gentlemen, that the people that this bill affects are among—there are many more cases of poor people that are much more appealing to me than the cases of these people of considerable wealth, because the person with considerable wealth, even though the money is in my hands, generally has associations or recourse in some way. But we have a great many cases,

for instance, of compensation, where we have had to step in in order to protect the right of the deceased, or his representatives; to recover for the death, lest the right run out during the time allowed by different State statutes, and recover $1,000, $500, $1,500, which we are holding for the heirs of the people who have been injured and are just claims under the laws of the different States. Now that is an extreme hardship, of course, as many of these are people who have lost the provider of the family, and can not get the little retribution which our laws entitle their heirs and representatives to.

Mr. WINSLOW. These will run into thousands, will they?

Mr. GARVAN. $47,000.

Mr. WINSLOW. Now, beginning at the most appealing one of all, Mr. Garvan, and running down to the $47,000, the line of demarcation probably between the most appealing and the one next to it would be so slight that you could not hardly tell where to draw the line?

Mr. GARVAN. Yes, sir.

Mr. WINSLOW. And it would not warrant a more general bill than a personal bill applying to 1 or 100 cases?

Mr. GARVAN. Well, I hesitate to express an opinion. I think a general bill would be better, of course. I am very anxious to see a general bill, but I have no objection to any relief of any individual or class of individuals.

Mr. WINSLOW. The point I wanted to bring out was this——

Mr. GARVAN (interposing). I would like to see the people of Alsace-Lorraine relieved. Those people were in many cases the most loyal French citizens all the way through the war. They are people that have clung to their French allegiance ever since 1871. Although oppression and the fact that Germany had control of that Province has been a fact since that time, these people have never given up their loyalty to the fatherland. Now they find themselves back in France and they find that we have their property, and we are helpless. France has protested, and rightly so, but under the terms of the act we can do nothing, and those countries need that money now more than they ever will again, I hope.

The same is true of Czechoslovakia, where we are sending money for the relief of many people, and I am quite confident that when you do generally legislate, it will never be the intention of Congress to keep the money of our actual Allies or our present Allies or friendly nations.

Mr. WINSLOW. Is there any difficulty between drawing the line between what we might call the personal claims, and those which might be regarded as the more commercial claims?

Mr. GARVAN. I do not think that there would be any difficulty about that. As we said, in our annual report, there was a demarcation between friendly and unfriendly investment in this country; between the business investments, which we maintain were more or less the outposts of the militaristic system of Germany, and the honest, frank investments, which were invited here by the opportunities of this country.

Mr. WINSLOW. So that there would be very little cause for embarrassment in the interpretation of a general bill which we might report and pass bearing on what I would term, for want of a better

name, the personal claims? There would be no difficulty for you to discriminate?

Mr. GARVAN. I do not feel that there would be any unsurmountable difficulty in that. Of course, before you gave back this tremendous amount of property I feel that you should consider what you are going to do in reference to claims of Americans against Germany. They say the amount—I can not vouch for this; you would have to get that from the State Department—the information on paper is that these claims amount to over $1,000,000,000. Those are the survivors of the *Lusitania*, the heirs of people on the *Lusitania;* they consist of people whose property was confiscated in Germany, and they consist of people whose property in Belgium was confiscated, whose mills were cleaned out of their machinery which was sent back to Germany, and they consist of the destruction wrought in this country before we went in the war, during the period of neutrality, on behalf of the German Government, ships that were injured and blown up in New York Harbor by Rintellan and men of that type who were working here before the war—the thousand and one things which you gentlemen can well imagine might grow out of the war.

Mr. WINSLOW. Would you expect to pay those out of what we might call the business or commercial claims?

Mr. GARVAN. Well, as I say, I do not know what they amount to, and before the property should be depleted to any great extent, I feel that Congress ought to know what those claims are and know whether or not they intend to pay these claims. I myself would not be in favor of paying those claims out of this money. I believe that the individuals should not be made to suffer and to pay 100 per cent of their property for the injuries which the German Government caused. But it may well be your policy that the Government desires to hold this property en bloc until such time as Germany furnishes us with security that the claims of American citizens will be paid and taken care of. Of course, the treaty does provide that Germany will pay her citizens. Now, from our experience here, and from our talks with different representatives of German citizens they say that that is equivalent to confiscation for them, because Germany can pay them in long deferred bonds or in marks, in the first place, which cut their property in 20, into a twentieth part, and those are questions which should be taken up by you.

I would be in favor of holding this property until such time as Germany furnished the United States Government with some security that American claims would be paid.

The CHAIRMAN. Well, it is not likely that that would be possible until the treaty had been completed.

Mr. GARVAN. I can't see how it could be.

The CHAIRMAN. Because we would have to provide some commission that would have to pass upon the claims of Germany against us, and of our people against Germany.

Mr. GARVAN. Yes.

The CHAIRMAN. Then you would strike your balance, and it is not possible, according to international law, that private property of citizens should be seized or confiscated to pay what are in their nature public debts.

Mr. GARVAN. I certainly would not be in favor of that.

The CHAIRMAN. This country has never adopted this policy.

Mr. GARVAN. No; our historic policy from the time of the treaty which we made with Great Britain at the time of the Revolution, provided, not only for the return of English property, but also recommended the States return all that they had confiscated, and then when the States did not return it, on account of the differences over State rights, and so forth, at that time, Congress, by a later treaty, in 1794, I think it was, made provision for the repayment through England of the private property that had been seized. It has been the historic policy of our Government not to confiscate the property, private property, to pay the public debts.

Mr. SIMS. I did not want the gentleman to think that I thought the Hilprecht case was more important or more appealing than many others, but I used it as typical. Here is a woman that is a German citizen simply by operation of law—legal construction. It was not her intention to become a German citizen, but she became such by being married to a German who lived here and contemplated living here but simply had not been naturalized, and I felt that in cases like that, and the one you spoke of a while ago, we might include in an omnibus bill without having to go through general legislation covering all the subject matters which you have so kindly related, and it was not at all that I did not want to have general legislation.

Mr. GARVAN. I understand that.

Mr. SIMS. But I thought that if there were urgent cases they ought to be acted on without waiting to see what the ultimate legislation ought to cover in a general way.

Mr. GARVAN. Every one of these cases that you relieve would please me very much.

Mr. SIMS. Not alone the case of this woman, but it was to cover such cases as that, without having to wait for a general bill covering all legislation that might be necessary before the final winding up of all the cases.

Mr. GARVAN. I am in absolute sympathy with relieving anyone from the harshness of this act who can be relieved, where there is no taint of their having been disloyal to this country, and there is none in these cases.

Mr. SIMS. We have passed covering Civil War claims omnibus bills where each claim in it was an individual claim, but we put them all together and made a general omnibus private claims bill, and so far such claims have been so treated. I suggested that the same could be done as to many of these pending claims; that we could pass upon the merits of each claim in the committee and then report on all of them as we do a pension bill and let it be passed without having to wait until all adjustments by legislation, treaty or otherwise, that will ultimately be necessary have been made before final disposition of all of the property in the Alien Property Custodian's hands. That is what I meant.

Mr. JONES. Have you in your hands property belonging to citizens of neutral countries?

Mr. GARVAN. Yes, sir.

Mr. JONES. You also have in your custody property belonging to what we might call friendly enemies, like Alsatians?

Mr. GARVAN. Yes, sir.

Mr. JONES. These two bills, the Butler bill and the Winslow bill, might be termed the married women's act. They relate wholly to married women. Is it your thought that this legislation should be so broad that property belonging to males, for instance, of a neutral country, or males in Alsace-Lorraine, could repossess themselves?

Mr. GARVAN. As to Alsace-Lorraine, I think that is true. As to males in neutral countries, I think further investigation would have to be necessary before you could make such a general rule, because there were males in neutral countries who were distinctly hostile to this country.

Mr. JONES. I was not going into the facts in particular cases that might justify us in not making the return, but I was thinking of the enactment of the law, the Butler bill and the Winslow bill, as relating wholly to married women. Now, I was wondering whether a condition might arise whereby a man or a single woman, a citizen of a neutral country or a friendly enemy, may have property under the custody of the United States—whether the act should not be broad enough to take them in where the facts justify the return. That would be on the general policy of closing up the custodian's work altogether.

Mr. GARVAN. Yes; the broader you make the bill the better I would be pleased.

The CHAIRMAN. Are there any other questions by the committee?

You will leave the memorandum that you have there; and if you have any other memorandum that you desire to leave with the committee, we would like to have it.

Mr. GARVAN. Then I will leave this memoranda, which is a digest of the cases which are in our files of the people who have been specifically mentioned.

Mr. JONES. Mr. Garvan, may I ask you one more question? I think it advisable, if you concluded not to put into the record possibly your entire investigation as to these particular cases that were presented at our last hearing—but have you read over the facts that were given in the particular cases at our last hearing so as to reach a conclusion as to whether the facts are practically correct, whether there is any issue in the testimony?

Mr. GARVAN. Just let me verify that. There is nothing to object to in the statements by any of the gentlemen as to questions of fact.

Mr. JONES. On the particular case presented?

Mr. GARVAN. Yes; nothing at all.

Mr. MORGAN. Mr. Jones, I have just read the report made upon Mrs. Hilprecht's case, the official report. Mr. Garvan handed it to me. It is in entire accord with the statement made here the other day in the hearing.

Mr. GARVAN. I am quite convinced of the good faith of the people. I have not seen the slightest thing to question.

I think you gentlemen asked—I am not sure, but I find it prepared for me—a reference to what Great Britain and France had done with the property since the war.

The CHAIRMAN. Yes.

Mr. GARVAN. The State Department notified us on January 26, 1920, that Great Britain had adopted the clearing office as provided

for in the treaty of peace with Germany. I assume you gentlemen know what that was. [Reading:]

1. *Great Britain.*—The State Department notified us on January 26, 1920, that Great Britain had adopted the clearing office system as provided for in the treaty of peace with Germany.

In this regard it is of interest to note the treaty of peace order 1919, issued August 18, 1919, and published in the London Gazette for Friday, October 24, 1919. This order states that it is to come into operation on the date when the treaty of peace comes into force. Paragraph 16 of this order states as follows:

"All property, rights, and interests within His Majesty's dominions or protectorates belonging to German nationals at the date when the treaty comes into force (not being property rights or interests acquired under any general license issued by or on behalf of His Majestiy), and the net proceeds of their sale, liquidation, or other dealings therewith, are hereby charged—

"(*a*) In the first place, with payment of the amounts due in respect of claims by British nationals with regard to their property, rights, and interests, including companies and associations in which they are interested in German territory, or debts owing to them by German nationals, and with payment of any compensation awarded by the mixed arbitral tribunal, or by an arbitrator appointed by that tribunal in pursuance of paragraph (*e*) of article 297, and with payment of claims growing out of acts committed by the German Government or by German authorities since the 31st day of July and before the 4th day of August, 1914; and

"(*b*) Secondly, with payment of the amounts due in respect of claims by British nationals with regard to their property, rights, and interests in the territories of Austria-Hungary, Bulgaria, and Turkey, in so far as

"*Provided*, That any particular property, rights, or interests so charged may at any time, if His Majesty thinks fit, be released from the charge so created, those claims are not otherwise satisfied."

It would appear from the above that Great Britain intended to take the full benefits offered by the treaty of peace.

Of possible information are the following statistics taken from the Board of Trade Journal of November 20, 1919, which statements were made by Sir A. Geddes, of the Board of Trade:

Total amount of property held by the English custodian belonging to persons resident in—	
Germany	£98, 766, 018
Austria-Hungary	17, 693, 807
Bulgaria	780, 863
Turkey	4, 258, 504
Debts due by persons in England to residents of—	
Germany	£11, 884, 803
Austria-Hungary	2, 194, 358
Bulgaria	156, 391
Turkey	897, 049

MEMORANDUM.

[No. 004488-F.]

MARCH 30, 1920.

To: Mr. Boggs.
From: Mr. Stellwagen.

Total amount of property belonging to persons residing in the United Kingdom held by the custodian of the enemy country—	
Germany	£42, 692, 626
Austria-Hungary	17, 554, 678
Bulgaria	377, 593
Turkey	4, 189, 283
Debts due to persons in the United Kingdom by residents of—	
Germany	£54, 906, 238
Austria-Hungary	15, 115, 163
Bulgaria	1, 205, 481
Turkey	4, 781, 516

A note was made to the above statement relative to the amount of property belonging to persons residing in the United Kingdom held by the custodian of the enemy country, to the effect that the amount cited does not include the proceeds of the sale of property which has been liquidated.

2. *France.*—The State Department advised us on February 27, 1920, that France had adopted the clearing-office system. We are advised informally that France would take advantage of all benefits offered under the treaty.

3. *British South Africa.*—The State Department advised us on February 27 as to the disposition of German property in South Africa. The inclosure was an excerpt from a local newspaper—the Cape Times, of January 15, 1920—and contained the Governor General's proclamation. It provides for the return of all property held by the local custodian belonging to any German national resident or domiciled in the Union at the outbreak of the war. It then provides for the return of property belonging to persons who at any time during the war were resident in enemy territory but who are solely subjects of a power not at war with His Majesty at any time during 1918. It then provides that the custodian may pay out of the property, rights, and interests of other German nationals vested in him certain debts as enumerated; and further provides for the retention of power to dispose of or to take possession of the property of any German national other than a German national resident or domiciled within the Union at the date of the outbreak of war.

THE LIQUIDATION OF CONFISCATED ENEMY PROPERTY.

[From Journal des Debats du Samedi, Sept. 20, 1919 (p. 3).]

THE LIQUIDATION OF CONFISCATED ENEMY PROPERTY.

The Senate then adopted the act pertaining to the liquidation of property, making its object a measure of war confiscation.

M. Guillaume Poulle, reporter, revealed the economy of the act.

It is concerned with permitting the liquidation of enemy property which has been confiscated since the close of hostilities. The confiscation can not be indefinitely prolonged. Some solution must be found which will serve both international and national purposes.

From the international viewpoint there are the peace treaties now under consideration. Germany has found out, by the treaty of the 28th of June, that the property of her citizens in France has become the property of our country; an analogous provision has been or will be included in the other treaties. The proceeds of the liquidation of German property will be credited to the assets of Germany in the chapter on the reparation of damages.

But from the international viewpoint the liquidation will be effected conformably [ormamant] to the legislation of our nation. It is to create this legislation that the present act has been submitted to Parliament.

Only property which has been definitely confiscated will be liquidated. The liquidation will be directed by the president of the tribunal in the place where the confiscated property is located, who will proceed by voluntary jurisdiction, without appeal.

When the value of confiscated property exceeds 100,000 francs, a deliberative "commission" established by the act will discuss the conditions of the liquidation and will offer advice on the matter.

The sales of confiscated property will be made at public auction.

M. Herriot did not conceal the fact that he was disturbed at the idea of allowing neutrals participate in the auctions. He fears that the enemy often lurks behind neutrals (enemies are often disguised as neutrals).

It is highly desirable, said M. Kail, keeper of the seals, that they turn from the ratification of the treaty of peace with Germany to the liquidation of confiscated German property. Of confiscated property, 15,820 in number have been declared in France, representing an approximate value of a millard and a half.

On the other hand, 165,823 declarations of enemy property and papers in the possession of our nationals have been effected. This all represents an important security for the reparation of the damages caused by Germany.

This credit must be recovered with the briefest possible delay. Efficacious precautions will be taken in the national interest in case of the need of limiting the categores of the candidates for admission to particpate in the auctions.

To-day we have victorious peace, but the liquidation of German property is becoming more and more urgent.

The CHAIRMAN. There is another bill pending before this committee, H. R. 10107, introduced by Congressman Kahn, which seeks to amend section 9 of the alien property custodian act, but we will not have time to take that up this morning, but I call your attention to it so that later we may call you before us and get your views thereon. There are other parties interested, and some of them are present here this morning, and I did not know but what we might have time to start consideration of it.

Mr. GARVAN. I have not seen that bill.

If there is anything further that any of the members of the committee would like to know informally about the property or anything in the office, Mr. Stellwagen is at your disposal at any time. He knows all of the details and has charge of all the foreign correspondence and everything of that kind, and he holds himself in readiness to go to the office of any individual or of the committee at any time.

The CHAIRMAN. The committee appreciates your coming before us and giving us the information and we may avail ourselves of the services of Mr. Stellwagen later on in considering these bills.

Mr. GARVAN. I might say, Mr. Chairman, that I have had the historical part of the treatment of enemy property very thoroughly looked up and digested, and I would be very glad to leave with your committee, not for the consideration of this bill necessarily, but for the future, a copy of that brief, which would save you possibly a great deal of labor in the future.

The CHAIRMAN. Is it very elaborate?

Mr. GARVAN. Yes, sir; it is quite extensive, but I give it to you and you can take it up at your convenience.

The CHAIRMAN. You may leave it here and it will be referred to whatever subcommittee is designated to consider these bills.

Mr. GARVAN. I had a man work on it for three or four weeks and it will save you a great deal of labor.

The CHAIRMAN. We will be glad to have it.

Mr. GARVAN. It is all the history of what we have done in other wars since the beginning of the Republic.

(A letter submitted by Mr. Garvan is as follows:)

ALIEN PROPERTY CUSTODIAN,
Washington, D. C., April 2, 1920.

Hon. JOHN J. ESCH,
Chairman Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D. C.

DEAR SIR: Replying to your recent communication relative to H. R. 12651 and H. R. 12884, I wish to state that I do not know of any papers or documents in my possession which would be of special interest or value to your committee in the consideration of these bills, but beg leave to furnish the following information and comments for your consideration:

In the first place, the committee's attention is directed to that portion of section 12 of the trading-with-the-enemy act which reads as follows:

"After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the Alien Property Custodian, or deposited in the United States Treasury, shall be settled as Congress shall direct."

It would appear from the above that Congress originally intended that all property that would be returned prior to the end of the war would be that released to persons who are not enemies or allies of enemies, as provided in section 9 of the act, and that the disposition of all other property would be adjusted subsequent to peace.

Further, the hearings and debates on the trading-with-the-enemy act in Congress clearly show that Congress wished to reserve to itself, after the end of the war, the determination whether or not the sequestrated property was to be returned to the original owner thereof or was to be used in the adjustment of equities and indemnities that might arise between the United States and the enemy nations. The provisions of the proposed treaty of peace with Germany (articles 297, 298, and the annex thereto) contain no limitation upon whatever action Congress may deem advisable, and hence it is evident that the United States delegates to the peace conference insisted upon appropriate provisions being made in the treaty which would, in effect, preserve the problem as a whole for the consideration of the legislative branch of the Government.

In view of the above, I am doubtful if Congress will find it practical or expedient to legislate from time to time with reference to the portion of property belonging to particular classes of persons heretofore determined to have enemy or ally-of-enemy status, for it probably will be necessary to first of all determine the general basis upon which Congress intends to dispose of all such property so held.

Under the trading-with-the-enemy act and the proclamations made pursuant thereto there are no less than 11 distinct classes of "enemies," and it is apparent that return of property to each class could be considered piecemeal only at a considerable sacrifice of the time of the legislative branches, as well as of the harmony of the general plan. The aforementioned two bills may be taken by way of example: H. R. 12651, applicable to limited cases, has been succeeded by H. R. 12884, greatly enlarging the class of property to be returned.

And these bills in no way exhaust the cases which are entitled to the most serious consideration of the Congress. Under the trading-with-the-enemy act all persons, regardless of nationality, resident within the territory of Germany and Austria-Hungary as such territory existed prior to the outbeak of the European war, are defined as enemies. (Trading-with-the-enemy act, sec. 2 (a).) This definition is so sweeping as to include even citizens of the United States who are still resident within such territory. Hence it has been necessary for the Attorney General, exercising the powers of the President to pass on claims for the return of property under section 9 of the act, to hold that the Alien Property Custodian can not release to such citizens property belonging to them which was sequestrated during the active period of the war. Of course, citizens and subjects of nations which remained neutral or were associated with the United States in the conduct of the war, likewise so resident, are subject to the foregoing rulings.

Further, it should be noted that extensive changes have been wrought in the territory of the two enemy powers as a result of the war and that many former subjects of the German or Austria-Hungarian Empires, "enemies" under the trading-with-the-enemy act, have now acquired or may acquire the nationality of newly created nations, or of nations associated with the United States in the conduct of the war or neutral during the war. By way of illustration, and not of enumeration, may be cited the cases of Alsace-Lorraine, Poland, Czechoslovakia, Jugo-Slavia, and the portion of Schleswig-Holstein recently annexed to Denmark by plebiscite. Such territorial changes and the corresponding change of citizenship, or privilege to change citizenship, have been recognized by the principal European powers which were associated with this country in the conduct of the war and are there regarded as established facts. The legal status of persons within the territories thus affected as claimants for the return of their property in the hands of the Alien Property Custodian has, however, undergone no change, and the Attorney General's Office in passing upon such claims has, in conformity with the provisions of the trading-with-the-enemy act, ruled that the residents of such segregated portions of enemy territory are still "enemies" whose property Congress has reserved to itself the right to dispose of after the end of the war.

To summarize the foregoing, I suggest that your committee consider the advisability of legislating concerning the disposition of all property held by the custodian at one time; however, if it is deemed advisable to legislate at an earlier date with reference to the persons contemplated in H. R. 12651 and H. R. 12884, your committee may desire to consider an extension of its terms to some of the foregoing-mentioned classes.

A consideration of H. R. 12651 shows that the proposed bill contemplates a special remedy for the class of women referred to by way of application to

the custodian, or such other person as the President may appoint, for the return of the property, the remedial sections of the bill—sections 3 and 4 being worded quite differently from section 9 of the trading-with-the-enemy act as amended in the deficiency appropriation act approved July 11, 1919. Section 9 affords a clear and simple remedy to persons entitled to the return of their property by the filing of a notice of claim with the Alien Property Custodian "in such form and containing such particulars as the said custodian shall require." Having so filed his claim, the claimant may pursue his remedy, either by way of non-litigated claim to be decided by the Attorney General exercising the authority conferred upon the President under section 9, or may file his suit in equity therefor in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides.

The procedure under section 9 has now been thoroughly regulated and established, and forms have been prepared and distributed to interested parties, by means of which more than 2,800 claims have been filed. Hundreds of these section 9 claims have been allowed by the Attorney General, and his rulings in that regard have established a set of precedents of considerable value in the speedy adjudication of the claims and in the furnishing of friendly advice to claimants, which is the policy consistently followed by this office.

The limitation imposed by section 9 is that the claimant shall be "not an enemy or ally of enemy." It would, therefore, appear that the object sought to be attained by the proposed legislation could be readily accomplished by a very brief amendment to section 2 or section 9 of the act, to the effect that after the passage of such amendment no person of the class indicated in the bill shall be deemed to be an enemy or ally of enemy within the purview of the trading-with-the-enemy act. Such an amendment would at once make available to the persons designated the remedies and the procedure now afforded by section 9, and I believe that such a method would greatly expedite the return of the property in question. On the other hand, the variation between the terms of the remedial parts of the proposed bill and the terms of section 9 of the trading-with-the-enemy act will require a careful scrutiny by this office and the officer charged by the President with the duty of passing on such claims, and possibly the construction of a new set of forms, all of which would tend to delay the speedy return of the property.

The above suggestions made as to H. R. 12651 as an entirety would likewise apply to H. R. 12884.

Should the above comments addressed to the bills as an entirety commend themselves to the judgment of your committee, any other comments which I might make upon the wording of specific portions thereof would obviously be of no value. If, however, the bills are retained in their present form, I would be pleased to be given an opportunity for further comment on their verbiage.

In conclusion, permit me to thank you sincerely for the opportunity so courteously afforded me of expressing my views on the proposed legislation.

Very respectfully,

FRANCIS P. GARVAN,
Alien Property Custodian.

STATEMENT OF MR. CHARLES HENRY BUTLER, WASHINGTON, D. C.

Mr. BUTLER. Mr. Chairman, I simply want to say one word about this bill that is under consideration. I am practicing law in Washington. My firm is Charles Henry Butler-John A. Kratz, with offices at 1537 I Street NW. We attend to many matters in connection with the office of the Alien Property Custodian, which are sent to us by attorneys from other cities, so we have had the opportunity of dealing with many different phases of the situation. My partner, Mr. Kratz, has had more to do with these matters than I have had. Unfortunately, he is sick to-day, so I will present the case as best I can.

It strikes me that the property in the hands of the custodian can be easily divided into two classes—one class comprising that which is

American and the other class that which is not American. It seems to me that a bill could be framed at the present time that could cover the interests of Americans. Representative Butler's bill and Mr. Winslow's bill cover just one section of the first class; that is, the married woman's status. Certainly there is every reason why these women whose interests are affected by those bills should be restored to American citizenship, but there are a great many other women who are still American, never were married to alien enemies, and who are not helped by the bill in its present form.

Let me give you just one typical case. We represent a family of four women. One is an elderly woman, the widow of an American, another is her daughter, who married an Austrian just before the war, and which Austrian has deserted her, and she doesn't know where he is. The other two are her daughters and the granddaughters of the elder woman. One of them married a German who was killed, and she has been repatriated; but as a result of the war her nerves have been so shattered that she is now in a sanitarium. The other one, her sister, an unmarried woman, American pure and simple, is in a very serious physical condition.

These women are all at Wiesbaden. Their property is in the hands of the Alien Property Custodian and it has been almost impossible for us to make arrangements for them. I wish to say that the Alien Property Custodian officials in that matter, to whom the facts were presented, all certified, first by our friendly Spanish representatives and then by the American consuls, have treated us with the utmost consideration; but their hands are tied.

Now, this is all American property. These women are in distress. They can not be moved. The older woman must stay there and take care of the younger women; and yet we can not do anything for them.

I have another instance of a man who——

Mr. JONES (interposing). Let me get those people. There is a grandmother?

Mr. BUTLER. There is a grandmother and a daughter and two granddaughters. The grandmother is 75 years old and is just staying there to take care of the others.

Mr. JONES. She was an American?

Mr. BUTLER. They are all American born, every one of them. I have known the younger ones from childhood. They are to a certain extent a business family connection. As I say, the Alien Property Custodian has treated us in that matter with the greatest courtesy; but his hands are tied.

Now, we have another instance of a man—I think his estate was somewhere between $75,000 and $100,000—he is 80 years old and is unable to travel under present conditions in Germany. His letter was most pitiful. He can not leave where he is. He is in Germany somewhere. His nephew, a New York lawyer, who is one of our correspondents, is sending him $100 a month in some way or other. Of course, the old man is still subject to the alien-enemy act; at least, he is located in enemy territory. This nephew has no security for what he sends him. He has just advanced it in the hope that it will eventually be repaid. We submitted that case to one of the officials of the custodian office, who said it was a case of real distress and ought to be covered by some legislation. The man's record is perfectly

good; he has an American passport; he can leave whenever his health will permit; but, meanwhile his property is tied up.

We raise no complaint about any of these matters. As I have already said, we have been treated most courteously. In these matters that have been held up we have shown that everything was in good faith, but the custodian's hands are tied. I am in hopes that this committee will see a way by which American money can be separated from the other money, and it seems to me that a bill can be provided which will alleviate the situation as to the cases out of the 45,000 to 50,000 total cases, involving American money, which I understand—although it is guesswork—are about 10,000 in number.

Mr. JONES. What do you mean by "American money"?

Mr. BUTLER. I mean to say money which was taken from Americans by reason of their location in Germany, or other causes other than their own alien enemy nationality. I do not suppose that Congress ever intended that Americans, merely because they were unfortunately detained in Germany, were to be permanently deprived of their property. Of course, Congress could never have intended that, because millions of that class of property have been given back to the parties who have come to this country. Only day before yesterday our office sent to an American who had been detained in Germany about $270,000, a warrant of the United States Government. That money had been taken because, owing to circumstances, he was caught when the war broke out in Germany and could not get back here until after the armistice. He kept his passport good; he came over here and only a few weeks ago we filed with the Alien Property Custodian a proper claim and the warrant was forthwith handed to us.

There are others, however, who have not been able to get back here. The poor ladies to whom I have referred, for instance. They would be glad enough to get away from Wiesbaden where they are and where they have been kept at enormous expense during the war by the voluntary advances in some cases of their friends, and which they will, of course, eventually repay when they are in a position to get back the property or have it released from the custodian's demand. There would be an absolute inequality if some of the Americans in Germany lost their property and others did not. We presume, therefore, that eventually all of this which I describe as "American money" will come back to the parties. I don't know how many million dollars—Mr. Stellwagon could tell us—has already been repaid. I know that property worth several millions has gone through my office. It is going back as fast as they can give it back, but we are hampered by this necessity of getting the parties out of Germany. In the cases I refer to there has been no bad faith in remaining in Germany. It is the misfortune and not the desire of the parties, and it is hoped that some relief will be given them in this bill.

Now, there is another matter that I want to call your attention to.

The CHAIRMAN. Are these bills sufficient to cover cases that you have in mind?

Mr. BUTLER. No; I do not think that these bills are sufficient. Therefore, I shall take the liberty, if the committee is willing, of suggesting one or two amendments.

The CHAIRMAN. You can do that in your hearing when you get the manuscript for correction.

Mr. BUTLER. I will submit to the committee before its next hearing some suggestions as to amendments and ask for their consideration.

Mr. DEWALT. Let me interrupt you just a moment. You stated a few moments ago that there were about 10,000 of these cases which were applicable to what you termed "American money." Now, granting that a good many of these cases are such as you have described, namely, that the parties unwillingly remain in Germany, or that they went there and could not get back, what assurance would there be if we passed general legislation, such as you suggest, that any or a great portion of these 10,000 people would not come here and get their money and then go back to Germany or go back to Austria and stay there?

Mr. BUTLER. In regard to that (speaking to Mr. Boggs) I think you stated that there were 6,000 or 8,000 American cases, Mr. Boggs. We, of course, only represent a few of them.

Mr. BOGGS. I think possibly you misunderstood me. I said possibly there were as many as 6,000 or 8,000 cases which in one way or another had American affiliations. I did not mean that many American citizens.

Mr. BUTLER. I did not mean to say that there were 10,000 Americans in Germany. In speaking of "American money" I mean, of course, to include these American women who will be relieved by the Butler bill and the Winslow bill. How many of those there are, I don't know.

Mr. RAYBURN. How many years were your clients in Germany before the war was declared?

Mr. BUTLER. They had been in Germany off and on for four or five years before the war broke out.

Mr. RAYBURN. Had they taken up a residence there?

Mr. BUTLER. They had not. They kept their passports regularly viséed. All to-day have passports granted within the last six months after investigation by the State Department and by consular agents who were sent there, as they have been sent in other cases, to investigate the why and the wherefore, of their remaining in Germany, and everything in that respect has been kept in accordance with State Department rules.

Mr. DEWALT. While your specific case which you have mentioned may be a very meritorious one, nevertheless the gentleman who just interrupted you said there were 6,000 or 8,000 of these cases which had American affiliations in Germany. Now the thought in my mind which I tried to convey is this: If there be that number of cases, some of which may be meritorious, on a par with the case that you have mentioned specifically, and others not meritorious, if you pass general legislation in regard to this matter, what assurance is there that a large proportion of these 6,000 or 8,000 cases will not get their money and then go back to Germany and stay there, and then Germany, if we are at war with it for an indefinite time, gets the benefit of that money? That is the thought in my mind.

Mr. BUTLER. In reply to that thought I would state that I believe in the last month or so very large amounts of money have been

paid to people who were in Germany who have come back, and there is absolutely no guarantee that they can not take the next steamer, if they can get a passport, and go to Europe and go into Germany. I don't see how you could possibly stop that.

Mr. DEWALT. That doesn't remedy the evil.

Mr. BUTLER. But at the same time I do not think there should be a classification in favor of those who by physical ability, as in the case that I referred to, as of the gentleman who came and got the money, as against those who can not get here. He received his money day before yesterday, and if he wants to, he can go to Germany if he can get there. I do not see that the United States has any more possibility of controlling the eventual return to Germany of any person who gets back this money than it has of keeping anyone else from going to Germany. I can not see that you can put an embargo on that class of people who have had money in the hands of the Alien Property Custodian from getting their money and then going to Germany. Because, as I have said in regard to the party who received his money, I have no idea that he is going to Germany, but at the same time if he does want to go to Germany, and can get there, he can do so, regardless of whether he has just recovered his property or not.

Congress can not, in my opinion, create the classification, which now exists under the statute, by which some people can obtain their money and return to Germany and other people are not to be allowed to have their money for fear they might either go back to Germany or stay in Germany. I should not think that would be equal legislation. But the question that comes up and that I would like to ask the committee to consider is the equal treatment of Americans—a bill by which there will be accorded to those Americans whose property has been taken and is now held by the custodian—unquestionably properly; unquestionably as a proper war measure; unquestionably as a measure which was absolutely necessary for the winning of the war, but certainly not with the intention that any American, who, by reason of the misfortune of being detained in Germany, should pay to the expense of his or her fortune 100 per cent thereof for the purpose of helping win the war.

Mr. JONES. Let me see if I am too narrow in my definition of your idea of American money. American money is money in America belonging to American citizens in Germany or in Austria?

Mr. BUTLER. Yes, sir.

Mr. JONES. Belonging to American citizens there?

Mr. BUTLER. Yes, sir.

Mr. JONES. At the time of the war and now?

Mr. BUTLER. Yes, sir. Or who may, by reason of the Butler and Winslow bills, be reinstated in their American rights. Of course, I understand the bill under consideration covers that.

Mr. JONES (interposing). That refers to married women.

Mr. BUTLER. Yes. So, in talking of American money I am simply asking that the suggestions very properly covered by the Butler and Winslow bills be so broadened that those particular married women would not be the only ones who benefited by it. That is to say, the distinction should not be made between the two sisters whom I refer to, one of whom would be—in that case it would be mother and

daughter—one of whom would be repatriated by the Winslow bill and get back her property, and the other, not having been married, would not get it back. What I am asking is that the bill should not be so narrow that in the same family a married sister would get back her property and an unmarried sister would not, when both have been kept in Germany for the same length of time and period, and both being half owners in the same fund, and both being American born.

Mr. JONES. Why should there be any distinction in the Winslow bill or the Butler bill in regard to the case that you cite if both sisters were American citizens?

Mr. BUTLER. If both sisters were American citizens and both were unmarried neither of them would get any relief.

Mr. JONES. And both women are American citizens?

Mr. BUTLER. In our case the two women happen to be mother and daughter, one of them, the mother, is married to a German; the other two, her daughters, are unmarried, one being now a widow.

Mr. JONES. Then, the one that is married to a German is not an American citizen?

Mr. BUTLER. Under the Winslow bill she would be repatriated and would get her money.

Mr. JONES. Suppose she is not made a citizen under the Winslow bill?

Mr. BUTLER. Even if not actually made an American citizen, the disability would be removed in her case, while, under that bill, the disability would not be removed in the case of her daughters, who are unmarried American women.

Mr. JONES. She would not be an American woman. She [illegible]ot an American citizen, is she?

Mr. BUTLER. She was. They were all Am[illegible]n born. The daughters were children of her former marriage to an American, now deceased.

Mr. JONES. But she married a German and she is not an American citizen.

Mr. BUTLER. No; she is no longer an American citizen, but her daughters are both American citizens and have their passports.

Mr. JONES. The Winslow bill does not attempt to make an American citizen or to naturalize.

Mr. BUTLER. Instead of saying "restored to citizenship" I should have said "disability removed and ability given to get the money." The Winslow bill would remove from the mother the disability to recover their property and would not remove it from the daughters. In all other respects they would be identical, but one, by reason of having married the German would get back her money, and the others by not having married Germans would not be able to get it back, which I hardly think would be exactly a fair deal.

Now, there is one other question which I want to bring up, and whether it could be included in this bill or not, I do not know but it is: Where an American had property—was in Germany—and had property which was invested and the Alien Property Custodian took it over in kind, that property has been producing an income, and on its being surrendered to the party from which it was taken, it carries with it all of the income which it has earned. We have

just had returned over to a concern in Chicago a very large amount of property, together with all the accrued income. In the other case I referred to the money was taken in cash. It was the capital in his co-partnership of an American who had gone to Germany, and on which capital he was having an income. He was practically a retired partner, being over 75 years of age, and he was receiving an income of from 8 to 10 per cent on his capital in the firm. This interest was liquidated at $270,000 and some odd figure and that amount given in cash to the Alien Property Custodian who held it for 20 months. Then, after the party returned and made his application under section 9, he was handed back a check for exactly the same amount as the custodian had received. In the case of our Chicago clients they got back all of the accrued income and interest; in the case where it was taken in cash, our client had to give a general release without getting one dollar of income for the 20 months during which he had been deprived of his property.

The CHAIRMAN. Where cash is thus taken, doesn't the Alien Property Custodian convert it into Government funds?

Mr. BUTLER. The Alien Property Custodian has permission to do so, but if it were not done, no interest is received.

Mr. BOGGS. It is not the Alien Property Custodian that has the power to dispose of this cash. It is his duty under the law to turn it over to the Treasurer of the United States and that official is the one that has the power to convert it into bonds and is directed to convert it into bonds.

The CHAIRMAN. I was wondering why that was not converted into bonds so that the owner thereof should have the benefit of the proceeds, the interest.

Mr. BOGGS. It is so converted, sir, but the Treasurer of the United States always keeps available a certain proportion of cash funds with which to pay back these claims.

The CHAIRMAN. He keeps an amount of free assets in his hands to meet current accounts?

Mr. BOGGS. Yes, sir.

Mr. BUTLER. Might I say here that I would like to insert in my testimony the explanation which we received from your office as to why we got no interest on that $270,000?

Mr. BOGGS. You are at liberty to use anything that you have from us.

Mr. BUTLER. We are not criticizing. I am not sure that under the act we could have obtained that interest unless it was actually invested because section 12 is permissive. Besides, we have given a general release. We filed—we are filing—a claim, however, that is more in the nature of a petition or request, in the hope that something will be done.

As I remember—[to Mr. Boggs]: Please correct me if I am mistaken—the answer came from the custodian that while there was permission to invest, there was always a large cash balance kept by the Alien Property Custodian and, therefore, it was impossible to state whether or not our amount, which is only an infinitesimal part of that large balance, was or was not invested. As it could not be definitely determined whether it was or was not invested, it was impossible for the Government to figure that this specific amount did

actually earn any income, and therefore we have nothing to represent 20 months' income on $270,000.

Now, the result of that is that some of the people whose money was taken have not suffered a dollar of loss. They have gotten back their money with interest. In the case of my Chicago friends, they have had turned back to them all of their real estate, all of their mortgages, and all of the accumulated income thereon from the depositary who collected it. In that case the people have not contributed anything whatever toward the winning of the war. In this other case, our client in New York has given up his entire income on $270,000 for 20 months toward that same purpose. Now that is an inequality which we hope this bill to be reported by this committee will correct.

Mr. SWEET. In one instance the money was turned over, and in the other instance securities or property was turned over?

Mr. BUTLER. Yes, sir.

Mr. SWEET. One was drawing a natural income and the other was property turned over which has not been invested in bonds.

Mr. BUTLER. It has not been invested, although the act gave permission for such money to be so invested. Now that money was deposited somewhere. It relieved the United States of the necessity of selling that many Liberty bonds for that period. Certainly the money did not—could not—have lain idle. Interest was either earned or interest was saved.

Of course, I need not tell to the members of this committee, who are all undoubtedly familiar with the story, what happened to the servant who kept the money of his Lord in a napkin, and who, when the King came back, brought the money to him and said, "Here is thy money," but as I remember, he was not commended for his carefulness. And we are only bringing this up as a suggestion as to whether or not this committee while it is considering this bill can do anything to relieve those, who by reason of the Government not having—the Government officials—not having availed themselves of the permission, did not invest this money, even as his Lord said to that servant, so can it now be said to the custodian—"Thou couldst have taken and bought Liberty bonds, and on my return I would have received my own with whatever the coupons amount to." We presume that all the members of this committee know what happened to that servant, and we trust that none of them will share the condign punishment that was meted out to him as the result of his mistaken ideas as to carefulness in handling other peoples' money.

So it seems to me we have the precedent of some authority for suggesting that that money should not come back, as it were, in a napkin, merely for an exact payment of what was taken, when others, merely by reason of the fact that it was invested—in some cases the depositaries, who, like the other servants in the incident above referred to (I think I am right in this, am I not, Mr. Boggs?)—have invested the money that they have had and returned the same with "usury"—although in this case we suggest a more modest rate than was allowed in those times.

Mr. BOGGS. No, sir; the depositaries are required under the law, under the regulations, I should say, promulgated for their governing, to account quarterly to the Alien Property Custodian for all income

received by them, and they accompany that accounting with a check for the amount, and that check is then deposited by the Alien Property Custodian with the Treasurer of the United States. No cash is kept on hand by the Alien Property Custodian at all at any time. As soon as these quarterly remittances come in from the depositaries who are financial agents of the Alien Property Custodian, provided by law, it is turned over immediately to the Treasury, just as soon as the entries are made out on our trust ledgers.

Mr. BUTLER. But if that is income, it goes to the owner of the money.

Mr. BOGGS. If it is income, it will be turned over as part of the money returned.

Mr. BUTLER. Yes. That is all I wish to say, gentlemen. I thank you very much for your courtesy.

The CHAIRMAN. When you get your transcript back, you can add by way of suggestion the amendments that you think should be incorporated in these bills.

Mr. BUTLER. I will be very glad to do that.

The CHAIRMAN. Is there any other witness who wishes to be heard this morning? We have a few minutes more.

Mr. BUTLER. Could I say just one more word, and that is I would like to say that in my view an amendment to section 9, expanding the powers of the Alien Property Custodian with regard to this class of money might be very effective in helping him to liquidate under the present rules and regulations that are now in force.

STATEMENT OF MR. LUCIEN H. BOGGS, GENERAL COUNSEL, OFFICE OF THE ALIEN PROPERTY CUSTODIAN.

Mr. DEWALT. Mr. Boggs, I would like to present a case to you which is apt to be met by these bills. I will try to formulate it.

A and B have what is known as a joint account in the Allentown National Bank. They deposit $10,000 in the bank. It being a joint account, either one has the right to draw upon that account, and, upon the death of either, the survivor becomes the owner of the account.

A lived, or afterwards went to Germany, remained there and is now in that alien territory.

B, the other owner of the joint account, is also still alive, but lives in France, which is friendly territory, allied territory. Under the law, as I take it, the Allentown National Bank, as depository, could not divide that fund and say that one-half of it belongs to A and the other half of it belongs to B, because it was a joint account and because it was deposited so that the survivor should become entitled to the entire amount upon the death of the other party.

The Alien Property Custodian, after the declaration of war, takes this account by notifying the Allentown National Bank to hold the money, as it belongs to an alien enemy, to wit, it belongs to A, who lives in German territory. The Allentown National Bank makes a return and says, "Yes; we have $10,000, a joint account deposited in the names of A and B, with a right of survivorship." That return is made to the Alien Property Custodian. But B now comes in, who lives in France, and says, "I am not an alien enemy; I have lived in

friendly territory, to wit, in France. I have the right to draw upon that account because it is a joint account, and I issue my check for the whole of the $10,000." The Alien Property Custodian then replies and says, "No; that will not do. You can not divide this fund. A, your joint depositor, is an alien enemy by reason of the fact that he resides in alien territory, and therefore we can not give you that money." "But," says B, who resides in French territory, to wit, in France, "I have the right of survivorship if A dies." "But," says the Alien Property Custodian, "A is not dead and A also has the right of survivorship if you die,"—to wit, if B dies. B then replies, "That may be so, if either one of us is dead, but I have been a friend all the while that you are holding my money as the Alien Property Custodian. I have the right to check that out." The Allentown National Bank holds it, of course, as a semitrutee both for the Alien Property Custodian, representing the Government, and the trustee for A and B. Now, what I want is my money. I am a friend and I have been all of the time."

Now, do you think that a case of that kind ought to be met by legislation?

Mr. BOGGS. In my opinion, that kind of a case should be taken care of properly under existing law.

Mr. DEWALT. Tell me how.

Mr. BOGGS. For this reason, that the law says that any person that is not an enemy or ally of an enemy, and having or claiming to have any right, title, or interest in money or other property which has been taken over by the Alien Property Custodian is at liberty to file a notice of claim asserting his claim to the property with the custodian, and thereupon the claimant has either one of two remedies: He may prosecute a nonlitigated claim, which will be decided upon by the Attorney General of the United States; or he may at his election bring suit in the district court of the United States in the district in which he resides; or, if a foreigner, in the Supreme Court of the District of Columbia, and assert his title to the property, and that case then would be considered just like any other case at law in which there was an assertion of a paramount title to the property, and it would be open to him then to show what were his equities and what were the adjustments between him and B in that matter. And I take it that if two men had deposited money under such a joint account there would be some adjustment and equity between them so that one or the other of them on an accounting would be entitled either to the whole fund or to some ascertainable portion of it.

Mr. DEWALT. You think the course of procedure in the case would show the equities existing between the parties?

Mr. BOGGS. Yes. And further, I think there is a clear demarcation in the history of the case that you have recited. If prior to the taking over of that property by the Alien Property Custodian a check had been drawn by the man living in France, I think that the bank in Allantown would have been at perfect liberty to honor that check and pay it out.

Mr. DEWALT. No doubt about that.

Mr. BOGGS. But a state of war then existed between those two countries, and the purpose of the trading with the enemy act was

to prevent the enemy from getting any benefit from credits or funds in this country, and that purpose could only be attained by the custodian putting an embargo on that fund.

Mr. DEWALT. That is right.

The CHAIRMAN. Are there any other questions? If not, the committee will adjourn.

(Whereupon, at 12 noon, the committee adjourned.)

COMMITTEE OF INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Tuesday, April 27, 1920.

The committee assembled at 11 o'clock a. m., Hon. John J. Esch (chairman) presiding.

The CHAIRMAN. Mr. Kahn, you desire to make a statement with regard to H. R. 10103, do you?

Mr. KAHN. Yes.

STATEMENT OF HON. JULIUS KAHN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA.

The CHAIRMAN. You have introduced a prior bill; is this one to succeed that?

Mr. KAHN. Yes; this is to take the place of that prior bill, which was H. R. 13262, in the last Congress.

The CHAIRMAN. What was the number of the prior bill in this Congress, H. R. 6373?

Mr. KAHN. Yes; that was introduced in the early part of this Congress. But H. R. 10103 is the bill that was subsequently introduced; that was introduced after Mr. Brodhead, who died last Friday, and I had talked with the Attorney General, Mr. Palmer.

I, of course, have not followed the matter as closely as I probably would have followed it had not Mr. Brodhead been interested therein on behalf of California associates. When he passed away two or three days ago, that compelled me to look into the matter hurriedly. He could have given the committee a great deal more of important information than I can possibly give at this time. Let me briefly state the situation regarding the proposed legislation:

This legislation is asked by a great many sufferers in the San Francisco fire of 1906; that was the great earthquake and fire. Most of the English insurance companies met their losses almost at 100 cents on the dollar; the American companies paid in full; one or two companies in this country failed, possibly three or four; I do not recall. But the German insurance companies had been looked upon as exceedingly strong, and they carried considerable insurance. Immediately after the fire they began to deny liability, and some of them left the State entirely—left no agent in the State.

Among the worst offenders was the company known as the Aachen & Munich Insurance Co. Then there was the Hamburg-Bremen Insurance Co., and, I believe, the Prussian National Insurance Co.

After the lapse of some time their agents came back and began to consult the insured to see whether compromises could not be made.

They pleaded that they were entirely ruined; that they had no funds with which to pay these losses, and that they would be bankrupt if they attempted to pay any considerable percentage of the losses. Finally, they began to make compromises running from 60 to 75 per cent of the total amount of the policy.

The insured persons, believing the statements as to the financial condition of these companies to be true, accepted the compromises. I am under the impression—but it is only an impression—that some of the insured began suits against some of the companies in Germany and obtained judgments. But those cases were very few in number, because the average man at that time was exceedingly anxious to get as much as he could because his business had been destroyed and he was trying to get back into his trade.

Subsequently, it turned out that these companies had made false statements as to their financial condition; they would have been able to meet their losses in full, had they had the desire to do so.

The amount, probably, that the Aachen & Munich Co. left unpaid was $400,000, the Hamburg-Bremen, $500,000, and the Prussian National, $200,000. These companies carried on their insurance business in the Eastern States; of course, their credit as insurance companies in San Francisco was practically gone after their action. And so indignant were the people of the Pacific coast at the time that I inserted in the Congressional Record a complete list of the insurance companies that were doing business in San Francisco prior to the fire and the earthquake, and a showing as to what each company had done toward meeting its obligations. The sentiment against the German companies was so strong that they, as I say, withdrew from the State. They have been carrying on business, however, in this section of the country; and we were told that they have several millions of dollars tied up in the hands of the Alien Property Custodian.

The crux of the proposed legislation is found on page 3 of the bill, beginning in line 15, with the proviso reading as follows:

Provided, however, That no statute of limitations shall be pleaded or act as a defense in any suit brought to establish or recover any such debt incurred or due after January 1, anno Domini 1906, but judgments based on claims or debts which existed prior to April 1, anno Domini 1911, shall be paid only out of the net assets of the enemy or ally of an enemy remaining in the custody of the Alien Property Custodian or Treasurer of the United States after the payment of duly established debts due from such enemy or ally of an enemy and incurred or due after April 1, anno Domini 1911.

In other words, this proviso would abolish the statute of limitations, so far as the claims against those German companies are concerned, and would enable the insured persons to present their cases to the courts for adjudication.

Mr. JONES. Would that include the ones that made settlement on a compromise basis?

Mr. KAHN. Yes, sir; if the insured can establish that they were deceived as to the assets of the company.

Mr. JONES. Well, this proviso only goes to the question of waiving the statute of limitations.

Mr. KAHN. That is all; and it only goes to——

Mr. JONES (interposing). The burden would still be on the plaintiff to show the fraud, in order to get a judgment.

Mr. KAHN. Yes. And then it does not deprive those persons who have valid claims from getting their money first; in other words, none of the funds can be taken to pay those claims arising out of the San Francisco fire until the claims that are valid at this time shall have been paid.

Mr. JONES. Then, the way I understand it is this: As to those people who have obtained judgment, their judgment shall be a lien subsequent on the residue of the property?

Mr. KAHN. Well, I am afraid that very few people out there have obtained judgments; they did not sue the company.

Mr. JONES. Most of these claims are unliquidated?

Mr. KAHN. Most of the claims are unliquidated.

The CHAIRMAN. What kind of a receipt did the insured give to the company when he accepted 60 or 75 per cent of the claim?

Mr. KAHN. He simply gave a receipt for the amount he received.

The CHAIRMAN. And not a receipt in full?

Mr. KAHN. Well, I do not know whether he did or not; he probably did sign a release; but even so, if it could be shown that he accepted a compromise, by reason of the false statements made by the insurance company, he could go into a court of equity——

The CHAIRMAN (interposing). Well, fraud, of course, would vitiate everything.

Mr. KAHN. Propably so. He could go into a court of equity at any time within the period he was permitted to do so, and probably recover his full amount.

Mr. MONTAGUE. As I understand you, your bill simply goes to the point that you want to remove the statute of limitations in the State of California, or in any other State in which they wish to bring that action to recover?

Mr. KAHN. Yes.

Mr. SWEET. But that simply applies to the property that is in the hands of the Alien Property Custodian?

Mr. KAHN. Yes; and only to that part of that property which is not used for paying claims upon which the statute of limitations has not expired.

Mr. SIMS. Mr. Kahn, has Congress the power to suspend the bar of the statute of limitations within a State?

Mr. KAHN. Yes; I will cite a case to that effect——

Mr. SIMS (interposing). I mean has it power to suspend the statute of limitations, say, of the State of California?

Mr. KAHN. Yes. Of course, these were foreign corporations; you would have to sue them in the United States courts; even in California the United States court would have jurisdiction.

Mr. SIMS. Exclusive jurisdiction?

Mr. MONTAGUE. Was the statute of limitations interposed before this property went into the hands of the Alien Property Custodian?

Mr. KAHN. Yes.

Mr. MONTAGUE. The statute of limitations was then in effect as to these claims?

Mr. KAHN. Yes; they could not have brought suit.

Mr. MONTAGUE. They could not have brought suit in California for that reason?

Mr. KAHN. That is correct.

Mr. MONTAGUE. You have a citation of a case showing that the Federal Government has a right to remove that bar of the statute of limitations?

Mr. KAHN. Yes. Congress has passed legislation upon that subject. The case in point to which I refer is Campbell *v.* Holt, 115 U. S., page 620.

Mr. SIMS. What is the gist of that decision?

Mr. KAHN. I just got it this morning and have not been able to examine it carefully. I want to say that the attorney for these claimants in California is a man who is considered a very able lawyer at the bar of California, and he sent me a telegram which pointed to the particular case.

Mr. JONES. What have those people done? Have they corralled all of those claims and put them in the name of an attorney in fact to sue in behalf of them all, or are they individual claims?

Mr. KAHN. No; they are individual claims. I have here [indicating] letters from individuals telling the circumstances under which they made settlements with the companies and asking for this relief.

Mr. JONES. I understand that; but I thought that possibly those people on whom a fraud was perpetrated, and who would like to get a judgment on their claims, might have got together and formed themselves into an organization for the purpose of prosecuting those suits, and assigned all of the claims to one person so that he could proceed and bring suit.

Mr. KAHN. I do not think that such an organization has been formed by them; probably it would be a desirable thing to do, but so far as I know there is no such organization. And yet I have had letters from individuals who suffered by the act of the German insurance companies; they have written me urging that this be done, and complaining that they were taken advantage of by those companies, and that they ought to be afforded some relief. That is the gist of the matter.

Mr. SANDERS of Indiana. Mr. Kahn, these losses all occurred during the great earthquake and fire in San Francisco?

Mr. KAHN. Yes.

Mr. SANDERS of Indiana. I suppose there were settlements and compromises made by all the insurance companies?

Mr. KAHN. Yes.

Mr. SANDERS of Indiana. And I suppose those adjustment were made through agents who did the best they could for the various insurance companies?

Mr. KAHN. Yes. As I stated at the beginning, almost every American company, except a few that went bankrupt, paid 100 cents on the dollar. The English companies did the same; but the German companies "welched" right at the beginning.

Mr. JONES. The American companies liquidated if they could not pay 100 cents on the dollar?

Mr. KAHN. Exactly. And they made a positive showing that they were absolutely unable to pay the full amount. But the German companies made the claim that they were unable to pay the full amount, and subsequently it was found that they had the money to pay every dollar if they had been inclined to do so.

Mr. STINESS. What is the amount in the hands of the Alien Property Custodian? I beg your pardon, Mr. Sanders; I thought you had finished.

Mr. SANDERS of Indiana. That is all right; I had not quite finished.

Mr. KAHN. I can answer that question quite easily. It is something over $2,000,000, and the amount involved in these claims is about $1,000,000.

Mr. SANDERS of Indiana. Now, it is proposed, as I understand it, to deal with the funds of these German companies in the hands of the Alien Property Custodian, and I suppose that is upon the theory that the United States Government has exclusive jurisdiction with reference to those funds, and that we can legislate with reference to those funds almost to any extent.

Mr. KAHN. I believe the act which created the Alien Property Custodian's office provided—in section 12, I think it is—that Congress has jurisdiction over the matter, and legislate further upon the control and disposition of the funds.

Mr. SANDERS of Indiana. Of course, the funds held by the Alien Property Custodian is held in trust for those people, and while it is an enemy corporation, it may be that there are stockholders who are not enemies; that is, they may have stockholders in those foreign corporations who are citizens of this country. Do you know anything about the facts as to that?

Mr. KAHN. No; I simply assume that the stock is held almost entirely by citizens of Germany.

Mr. JONES. Well, I know citizens of the United States that have stock in the Hamburg Insurance Co.

Mr. KAHN. In the Hamburg-Bremen Insurance Co.?

Mr. JONES. Yes; in the Hamburg-Bremen Insurance Co. I just know one or two of them.

Mr. KAHN. Well, I imagine that if there are some, the number would be very few in this country; the bulk of the stock is held by German citizens.

Mr. SANDERS of Indiana. Of course, that, however, is a very important trust, because the enemy countries will have money of our citizens in trust; and the reciprocal relations between the two countries determine the rights of the citizens of the several countries; so that, of course, we should deal with that trust fund just as carefully and judiciously as if it were the fund of our own citizens. Do you think it is wise legislation after a period of 10 years has elapsed, after adjustments have been made and the statute of limitations has barred further action, unless that statute is changed by extraordinary emergency legislation—do you think it is a wise legislative policy for us to open up these claims and permit the claimants to go back 10 years—well, it is a great deal more than 10 years now—but the reason I use the period of 10 years——

Mr. KAHN (interposing). It is 14 years ago.

Mr. SANDERS of Indiana (continuing). The reason I am using the period of 10 years is this: That since this right of action accrued, in 1906, 10 years elapsed before we went into the war. Now, all of that period of 10 years having elapsed, do you think it would be a wise legislative policy now to permit the claimants to go back, after 14 years had elapsed, and establish, for instance, that there was fraud in

the settlements? Of course, ordinarily, when the action is predicated originally upon fraud, the statute of limitations, in most jurisdictions, is two or three years, because of the fact that fraud is such an intangible thing to deal with that it is thought best not to have too long a statute. Do you believe it would be a wise legislative policy to go back and do that?

Mr. KAHN. Well, I think this is an exceptional matter; the war coming on impounded in the hands of one individual, an officer of the United States, the funds of those alien companies——

Mr. MONTAGUE (interposing). Well, the statute of limitations had already interposed before this property was impounded in the hands of that individual; that is true, is it not?

Mr. KAHN. Yes.

Mr. SANDERS of Indiana. And the people who bought the stock of that corporation would have the right to assume, under ordinary circumstances, that that fund would be free from these claims?

Mr. KAHN. Well, that is true, but——

Mr. SMITH (interposing). Excuse me for interrupting, but along the same line let me ask this: When did these people that claim that they made those compromises on account of the fraudulent representations discover that such fraudulent representations had been made? How long was it after that was done?

Mr. KAHN. It was some time after. It was done through the act of the agent of one of these companies in California, who told the people who had been insured with the company that he represented the true facts.

Mr. SIMS. Well, if they discovered that fraud had been practiced and desired to seek a remedy based upon the fact that the fraud had been practiced, they should have commenced as soon as they discovered it.

Mr. KAHN. They could not; the statute of limitations had interposed.

Mr. SIMS. Had the statute of limitations already barred them before that?

Mr. KAHN. Yes; when they found this out it had.

Mr. SIMS. The United States statute of limitations?

Mr. KAHN. Yes; they had been barred of all their remedy.

Mr. SIMS. They did not at that time come to Congress and ask for the legislation that they are now asking for?

Mr. KAHN. No. Of course at that time they probably would have had very little chance to get payment; they would have had to pursue the funds of these companies all over the country.

Mr. MONTAGUE. The question asked by Judge Sims brings this point up in a very pertinent way: You said they did not then come to Congress and ask for legislation similar to this. Mr. Kahn very properly gives the reason why they did not, because the funds could not be reached.

But that brings up the right of Congress to act in the matter. What right has the Congress to extend the statute of limitations of any State or extend it or contract it? Now, here is the decision to which you have referred [indicating]. This relates, as I read it, to the right of a State to change its own statute of limitations. I would like to get a precedent showing that the United States can

prescribe a statute of limitations for any given State. I have always thought the statute of limitations to be the law of the forum.

Mr. KAHN. That is the custom, I think, in the United States courts.

Mr. SANDERS of Indiana. I think, however, Gov. Montague, that since this statute deals with this fund which is under the exclusive jurisdiction of the United States——

Mr. MONTAGUE (interposing). Yes; I see how that would make a difference; that may be another question; but is that aspect of it cared for by this bill?

Mr. SANDERS of Indiana (continuing). Since this proposed law would deal with the funds exclusively within the jurisdiction of the United States Government, probably the method of procedure in any State court could be prescribed by Congress, just like when we passed the liability act, and other United States laws, to be enforced in any State, we prescribe a statute of limitations. I believe that, as a matter of law, we would have the right to bar the running of the statute of limitations; we would have a right to provide any sort of remedy to reach this fund that we wanted to.

Mr. KAHN. Yes; I think so.

Mr. SIMS. Would we have a right to revive a dead liability, so to speak, that died before the Alien Property Custodian took charge of this property?

Mr. SANDERS of Indiana. I think so, because we owe no duty except the one prescribed by international law. We may not do it in the case of these citizens of Germany, because we do not want them to confiscate the funds of our own citizens.

Mr. SIMS. We can not do it, except in the case of German citizens.

Mr. SANDERS of Indiana. But this is the property of German citizens, which is in the hands of the Alien Property Custodian; and I think we have an absolute right to deal with the property in the hands of the Alien Property Custodian; we could use it all if we wanted to.

Mr. KAHN. I think we can; I think we have complete jurisdiction over it.

Mr. SANDERS of Indiana. I think we have a perfect right to deal with that in any State of the Union.

The CHAIRMAN. But I think Congress would be very finical about passing such an enactment, if it felt that citizens of the United States had any right to any part of this fund belonging to the alien enemy. I think that consideration would influence Congress more than the technical laws of any State.

Mr. KAHN. Yes.

The CHAIRMAN. However, the laws of California require a foreign corporation to get a certificate in order to do business in California, do they not?

Mr. KAHN. Yes.

The CHAIRMAN. And as one of the conditions of taking out a certificate to do business, the foreign corporation has to file annually a statement of its business, does it not?

Mr. KAHN. I think it did.

The CHAIRMAN. So that if your State requires the filing of annual statements, you would have there a record as to the financial transac-

tions of these three companies, which might indicate whether or not they were doing a profitable business in the State of California.

Mr. KAHN. Yes; I am under the impression that that is the law of California. We have a State Insurance Commissioner, and the companies make reports to him. He gives them authority to do business in the State; when he is satisfied of the correctness of the reports, he issues a certificate to them.

Mr. SIMS. Mr. Kahn, if the agents of those companies had made to those insured persons what were then believed to be honest representations, to the effect that they would not be able to pay in full, and made compromise settlements; and afterwards it turned out that the conditions were better than the agents supposed they were, it would hardly be an act of fraud, and while good faith would require them to pay in full, that would not vitiate the settlement that was made, would it?

Mr. KAHN. That does not enter into this matter. It was not a case where they were better off than they supposed they were; they knew that they were better off than they represented themselves to be; but in order to compel—not to induce, but to compel—the insured man to accept what he could get, they made fraudulent statements as to their actual standing financially.

Mr. SIMS. Then they were not deceived, but absolutely made false statements and procured a financial benefit thereby?

Mr. KAHN. Absolutely.

Mr. SIMS. The statutes of limitations ought not to run against a man who makes such a false representation as that, but our power to remove it is a different question.

Mr. KAHN. That is the position of our people—that those representations were fraudulent.

Mr. SIMS. Were false?

Mr. KAHN. That they were false.

Mr. SIMS. And known to be false?

Mr. KAHN. Of course, at the time those insured people did not know that they were false, but subsequently, one of the agents of one of these companies pointed out wherein the statements that had been made to the insured were false.

Mr. SIMS. One of the agents who had participated in making the statements himself?

Mr. KAHN. No—well, probably in adjusting the claims, he might have been led to believe that the condition of affairs was as he had been told by the managers of the company; and he went to those insured people and induced them to make settlements; subsequently, he found out that those statements that had been given to him were false and fraudulent.

Mr. SIMS. That is, had the statement been made that the home companies in Germany were insolvent?

Mr. KAHN. Practically; something of that sort; at any rate, that they were not able to pay 100 cents on the dollar.

Mr. SIMS. Well, evidence of what they did with German risks and German liabilities at the same time, in Germany, would be very good evidence as to whether they were practicing fraud here in making those representations.

Mr. KAHN. Well, they seem to feel, and this agent is ready to show, that the companies at the time they made the statements that

they were unable to pay, were amply able to meet the lawful demands of the insured.

Now, I want to say, finally, that I have taken up the matter with the Attorney General. Mr. Brodhead and I called upon him and pointed out the situation to him. He recommended a modification of the bill so as to make only the money available for the payment of these claims that was the residue after the claims that had not been barred by the statute of limitations have been paid.

Mr. SIMS. That is, against the same companies?

Mr. KAHN. Against the same companies. And Mr. Brodhead carried on further interviews with Mr. Garvan, the present Alien Property Custodian. So far as I know, they had no objection to the passage of the legislation.

Mr. SIMS. Well, they are protected in whatever Congress does.

The CHAIRMAN. I had a communication from the Attorney General in relation to this bill. I submitted it to him, and he, in brief, advised us as follows [reading]:

> It would appear advisable to postpone any consideration of this bill until after the final termination of the war. Further legislation providing for final disposition of enemy property which has been seized by the Alien Property Custodian is required by the provisions of section 12 of the act, and the change in section 9 proposed to be made by the bill in question is a matter intimately associated with the disposition of this enemy property.
>
> I am of the opinion, therefore, that no action upon this bill should be taken, except in connection with legislation providing for the final disposition to be made of enemy property seized by the custodian and held by him and by the Treasurer of the United States.

This was a report made on the 7th day of November, 1919, on your new bill, H. R. 10103.

Mr. KAHN. Yes; I understand.

The CHAIRMAN. Since that letter from the Attorney General was written this committee has had hearings on two bills, introduced by Representatives Winslow and Butler, relating to women who had married enemy aliens and whose property had been seized by the Alien Property Custodian.

Three days ago I received a letter from the Attorney General stating that, on the request of the Secretary of State, he thought it would be advisable to amend section 9 of the trading-with-the-enemy act, in order to meet the very crying needs of people in Alsace-Lorraine, who are now a part of France, but who were enemy aliens during the war, and there were thousands of them; and he was to submit his views further after conference with the Secretary of State. If that should come in, it would also affect the same section of the act that your bill relates to, and this whole matter could then be thrashed out.

Mr. KAHN. Well, I would appreciate it very much if you could send me a copy of the letter of the Attorney General of November 7, and also notify me about the other amendment of section 9 which will be sent to you.

I will try, if you will give me a few days' time in advance, to induce Mr. Solinsky, who represents some of these claimants, to come here; he knows the situation much better than I do. As I say, I have not had a chance to look into it very fully, because I was expecting Mr. Brodhead to make the argument before this committee.

The CHAIRMAN. Yes; we understand the situation.

Mr. KAHN. If I can have ample notice I would like to do that; and I feel quite sure that Mr. Solinsky will be glad to come to Washington to present the matter more fully than I have been able to present it.

The CHAIRMAN. Should the Attorney General, at the instance of the Secretary of State, draft any proposed legislation along this line, and a bill is introduced, I will be glad to transmit a copy of the bill to you, and you can look it over and see whether you want to amend that bill, so as to take care of the special matters which are covered by this bill of yours.

Mr. KAHN. That will be very satisfactory to me; and I thank the committee, Mr. Chairman, for its courtesy.

(Thereupon, at 11.40 a. m., the committee adjourned.)

COMMUNICATIONS.

TELEGRAM SUBMITTED BY BENJAMIN F. FEINER.

NEW YORK, *March 24, 1920.*

Hon J. W. FORDNEY,
Chairman Ways and Means Committee,
United States Congress, Washington:

On behalf of Mrs. Lydia H. Burgstaller, a lady of American birth, married to a subject of the former German Empire and now residing with her husband in Germany, may I ask you to record my earnest approval of the measure now under consideration for the relief of ladies in the position of my client, whose property in this country has been turned over to the custodian. The amount of moneys and securities turned over by me to the custodian exceeds $100,000, and I am to-day in receipt of an earnest appeal from her for the loan of so trifling a sum as $1,000. My client is in dire need, so much so that I have shipped food to her. Please acknowledge receipt hereof.

BENJAMIN F. FEINER,
100 Broadway, New York City.

LETTER SUBMITTED BY FLORENCE WHITTELL ALBERT.

Hon. SAMUEL E. WINSLOW,
House of Representatives, Washington, D. C.

MARCH 11, 1920.

DEAR SIR: I, Florence Whittell Albert, was born in California in April, 1882. My father, Alexander Pope Whittell, was born in New York. His father was Irish; his mother, American, of English parentage. My mother, Jennie A. Whittell, was born in San Francisco, Calif. Her mother was Irish and her father English.

I met my husband, a German subject, when traveling in India, and was married to him in Paris at the American church by Rev. Mr. Morgan, in March, 1909. A marriage contract was made in which my husband renounced all rights to my property or any that I might possess. This marriage contract was executed by Monsieur Picard, 17 Bis Rue la Boitie.

My property, which is now confiscated by the Alien Property Custodian, was left by my grandfather to my father in trust for me. No portion of the capital or income has ever been used in Germany. I feel sure that when you know the facts in the case you will see the injustice of keeping my property from me and will see your way clear to returning the same to me. I have never felt that by my marriage to a foreigner I changed my nationality. I am and have always been a true and loyal American.

Very truly, yours,

FLORENCE WHITTELL ALBERT.

LETTER SUBMITTED BY HON. WILLIAM I. SCHAFFER.

Hon. THOMAS S. BUTLER,
House of Representatives, Washington, D. C.

MY DEAR THOMAS: I am in receipt of a cablegram from Mrs. Hilprecht, in which she says:

"Prof. Hilprecht resided in Philadelphia 28 years, till 1914. We intend to return and resume our residence there immediately after ratification of peace."

Will you bring this to the attention of Chairman Esch and any of the members of the committee that you may run across?

With best regards and much appreciation of your courtesy while I was in Washington, I am,

Sincerely, yours,

W. I. SCHAFFER.

LETTER SUBMITTED BY HEINRICH BLUN.

5 KATHARINENSTRASSE, BERLIN-HALENSEE,
January 10, 1920.

To the Congress of the United States of America, Washington, D. C.

SIRS: I have the honor to submit to you the following:

On September 14, 1912, died at Munich, Germany, Mr. Max Riegelman, a citizen of the United States of America. His last will contained the following disposition:

"Fourth. I hereby revoke and cancel the last full paragraph of paragraph numbered second of my said last will and testament, which, in effect, gives and bequeaths to my nephew, Heinrich Blun, and my nieces, Paula Blun Haase and Eugenia Blun, a one-tenth part of my estate in equal shares, and with reference to said one-tenth part of my estate I hereby direct as follows: I give and bequeath to each of my said nephew and nieces, to wit, to Heinrich Blun, Paula Blun Haase, and Eugenia Blun, the sum of $1,000 out of said one-tenth part of my estate, the balance I give, devise, and bequeath to my executors and their successors named in my last will, to have and to hold the same in trust as follows: To invest or reinvest the same in the manner provided in the first full paragraph of paragraph numbered second of my said last will and testament, for the investment of my estate in the event of my decease prior to my wife; to collect the annual rents, income, and profits of said trust fund, and to pay over to net annual rents, income, and profits thereof in at least semiannual installments to my sister-in-law, Anna Blun, the wife of my wife's deceased brother, Julius Blun, during the term of her natural life; and on her decease, or on her decease before me, to pay over the principal of said trust fund, and any unpaid rents, income, and profits to my said nephew, Heinrich Blun, and my nieces, Paula Blun Haase and Eugenia Blun, in equal shares absolutely and forever; and in the event of the prior decease of any of them, their issue shall take in equal shares per stirpes and not per capita, the share their parent would have taken, had such parent survived; and in the event of the decease of either of my said nephew or nieces leaving no issue, him or her surviving, then the survivors of my said nephew and nieces shall take the share of such deceased nephew and niece in equal shares."

Thereupon the executors of this last will, the American citizens Emil Carlebach and Joseph Haberman, both of New York City, took possession of this sum of $12,000 and paid the annual interests thereof, amounting to $555, in two monthly rates to my mother, Mrs. Anna Blün, in Berlin. The last time this was done on the 15th of October, 1916. Owing to the outbreak of the war between America and Germany these remittances could not be continued and, in consequence thereof, my mother, who was in want of this money for his livelihood, was obliged to contract debts which now must be restored.

The capital is deposited at the bankers J. & W. Seligman & Co. of New York. The interests accumulated up to the 9th of December, 1918, amounted to $1,122.29. On this day the Alien Property Custodian has sequestered this sum. Since this day the interests due have increased by $555, so that the total is $1,677.29. The executors are not allowed to hand over the money to my mother without a special permission of the authorities.

On September 18, 1918, I applied to the Alien Property Custodian for suspension of the sequestration, but he referred me to the Congress which has the

ultimate disposition of all enemy property. In the name of my mother, who is old, sick, and in great distress, I solicit the Congress:

1. To instruct the Alien Property Custodian to restitute the sum of $1,677.29 to the executors Messrs. Emil Carlebach and Joseph Haberman.

2. To allow these executors to pay to my mother this sum and the further interests falling due.

The capital is according to the disposition of the testator in the hands of the executors; it is therefore no enemy property.

The interests were falling due after the outbreak of the war; so they are also no enemy property which was existing at the beginning of the war and to which only the regulations of the treaty of peace are referring.

The maintenance of the sequestration could not be justified, neither in the moral nor in the human sense. As above mentioned, my mother is old, sick, and in great distress. It was the will of the testator to avoid this, and the Congress certainly will not act against the last will of an American citizen, and it would be inhuman to put a person into misery only because the ratification of the treaty of peace could not yet take place.

Hoping that the Congress will fulfill my request, I have the honor to be, sirs,

HEINRICH BLÜN.

Address, Heinrich Blün, Berlin-Halensee, Katharinenstrasse 5.

LETTERS SUBMITTED BY HON. MORRIS SHEPPARD, N. C. SCHLEMMER, AND HON. ALFRED R. WIGGAN.

UNITED STATES SENATE,
April 6, 1920.

MY DEAR MR. BUTLER: Please note the inclosed correspondence relative to the bill you have introduced, No. 12651, relating to married women intermarried with aliens. Please note what is said in one of the inclosures regarding certain changes in the measure which the writer deems advisable.

With cordial good wishes, I am,

Yours, very sincerely,

MORRIS SHEPPARD.

Hon. THOMAS S. BUTLER, M. C.,
Washington, D. C.

ELMHURST, KYLE, TEX., *March 31, 1920.*

Hon. MORRIS SHEPPARD,
Washington.

MY DEAR SENATOR: The inclosed letter from Mr. Wiggan, Germantown, Pa., is self-explanatory. If you can consistently support the bill referred to, possibly somewhat changed as suggested by Mr. Wiggan, I would greatly appreciate your assistance.

Very truly, yours.

N. C. SCHLEMMER.
Formerly Postmaster at Austin.

P. S.—I met Mr. Wiggan's sister is Europe during the war and know her to be a loyal American, born in Pennsylvania. Her father was English and her mother native American. Her husband is a German.

PHILADELPHIA, PA., *March 12, 1920.*

Mr. N. C. SCHLEMMER,
Elmhurst, Kyle, Tex.

MY DEAR MR. SCHLEMMER: Knowing the high regard in which you hold my sister, and having also in mind your offer of any help possible for her, I am writing you the following facts with the urgent request that you promptly give the matter the aid of all the influence you possess.

Hon. Thomas S. Butler, of Pennsylvania, has introduced House bill No. 12651, entitled "Relating to married women intermarried with aliens." This bill has been referred to the Committee on Interstate and Foreign Commerce.

The present condition of many of these American-born women is most deplorable. American-born women, whose patriotism and loyalty is unquestioned, who upon the declaration of war, by virtue of their marriage to aliens, were automatically classed as "enemy aliens," and all of whose property—real and personal, principal and interest—was taken over by the Alien Property Custodian under the trading-with-the-enemy act.

This act, while inflicting much hardship, was a very necessary measure during the continuance of the war, but the war has virtually been ended for much over a year, and it is simply the long-drawn-out existence of the legal figment of a "state of war" that continues the operation of this act as a most unnecessary, needless, and unjust hardship on these innocent victims, who are of our own flesh and blood and kindred in every sentiment.

My sister's case is a concrete example of those intended to receive a just and very necessary relief under the provisions of this bill, which bill, while too narrow in its application as presented, and requires amendment, provides a method for the return of the property, income, etc., of American-born women married prior to April 6, 1917, to enemy aliens, which was taken over and held by the Alien Property Custodian under the trading-with-the-enemy act.

My sister was born in this State, of straight English ancestry on both sides, and always resided in this State, until some 14 years ago, when, at the age of 48 years, she married a German subject, whose two brothers were naturalized American citizens and had resided in this country for many years, one of them having previously married my cousin by marriage, also born in this State.

My sister went to Germany with her husband to live there temporarily, because her husband's aged and feeble mother lived there and needed the care of her son, but it was their intention to return to this country after the mother's death. They were caught in Germany by the war and were compelled to remain there. During the war the old mother died and they are now free from that obligation, but must remain in Germany at least until conditions have materially improved and Germans are permitted entry into the United States.

All of my sister's securities, amounting to a good many thousands of dollars, were taken over by the Alien Property Custodian, and all income arising to her benefit from trusts under my father's and my mother's wills, amounting to about $4,500 per year, has been paid over to the Alien Property Custodian and must continue to be paid over to him until the anomalous condition of a "state of war" is ended somehow.

Not a cent, therefore, has gone to her from this country since January before we entered the war, and she is now, as she has been during the war period, dependent on her husband's salary (small from American standards), which is now woefully insufficient under present German money values and, on account of the "state of war" still existing, I am not permitted to send her any of my own money, even as a gift.

She writes me most touchingly, though very bravely, of the hardships endured and being endured. She says that those of the present are much worse than those during the war; that she has simply bought nothing in the way of clothing for over four years, because every cent was needed for rent and food, dresses, shoes, stockings, and other personal garments having been patched and repatched to a degree that she would previously have believed impossible; new things, even now, are out of the question on account of the enormous prices, a pair of lady's shoes of ordinary quality costing 400 marks; she has lost over 30 pounds in weight, and you know she had not much to lose, her normal weight being around 140 pounds.

It is a most unpleasant and exasperating feeling for Americans to realize that their flesh and blood are needlessly suffering from the continuation of an act—purely a war measure—which long since passed the point of either usefulness or necessity, and to realize further that by the very continued operation of the act they are not allowed to send a cent of their own money—not even as a gift—for the relief of those near and dear to them, while we are called upon to relieve those of every other possible nationality.

All of my sister's securities were in purely American investments and were almost entirely such as had come to her direct, either by gift or bequest, from her grandfather, her father, or her mother. She left them all here in the hands of the National Bank of Germantown, where she continued to keep

her personal account, and did not take them to Germany with her, because she always had in mind her ultimate return to this country. She was always an ardent American and remains so to-day, although by her marriage she is legally a German subject.

The bill in question is an admirable one, in that it proposes to do justice to many American women who, while just as American as they ever were, are classed as enemy aliens through the unfortunate fact that they contracted marriages prior to the World War with subjects of other countries, which became enemy countries during the war and, being thus classed as "enemy aliens," their property, both principal and income, has been taken over by the Alien Property Custodian under the trading-with-the-enemy act.

It seems to me, however, that the requirement on line 4 of this bill introduced by Hon. Thomas Butler is too drastic and restrictive, in that it requires that the woman's parents shall be "also born in the United States." This makes the bill look a little too much like general legislation for a favored few, and, in order that the act may be freed from any unnecessary narrowness of application and may have its protection extended to all those who should properly and justly come under its provisions, it should be amended so that the parents, or at least one of them, need not have been born in the United States, but may have been born in one of the countries allied with us in the war—that is, if it is desired to exclude those whose parents or parent were born in enemy countries. In the case of my sister her mother was born in the United States, while her father was born in England and came to this country an infant in arms.

I have nothing but loathing and contempt for German militarism and for all those who, either in thought, word, or deed were associated with or countenanced its barbarous, inhuman, and devilish application during the war, and they justly deserve all the hardships they are enduring, and more, but I can not place my sister, or any other American-born girl, in this class, and I think it will be a national disgrace and a lasting shame if we permit them to be so classed by lack of proper Government action.

I am sure that I can count on your fullest aid and influence in support of this bill, if it is amended as suggested, so that it may properly reach all those entitled to protection.

Thanking you in advance for your assistance, and with highest personal regards, I remain,

Yours, sincerely, ALFRED R. WIGGAN.